No. 154

COUNTY SURVEYORS—COUNTY COMMISSIONERS—COUNTIES—HIGHWAYS—BRIDGES

Held: All county highway and bridge machinery, machinery and equipment and tools to be used on highways and bridges and all supplies and materials to be used on causeways, highways and bridges are purchased subject to the approval of and by contract executed by the board of county commissioners under the restrictions and conditions contained in Chapter 42, Laws of 1941.

July 1, 1941.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

You have submitted the question whether that portion of Section 1622.1, Revised Codes of Montana, 1935, applying to county surveyors' duties in counties having a total registered vote of 15,000 or over, as follows,

> "purchase and secure all highway and bridge machinery and machinery equipment and tools to be used upon highways and bridges **with the approval of the board of county commissioners;** purchase and secure all highway, bridge and causeway supplies and materials **with the approval of the board of county commissioners."** (Emphasis mine.)

should be read and construed in connection with Section 4605.1, Revised Codes of Montana, 1935, as amended by Chapter 42, Laws of 1941.

It will be noted the board of county commissioners is the executive head of the county government, and the board executes all contracts on behalf of the county under its statutory authority, exercising its sound discretion in each instance for the best interests of the county.

Vol. 2, Chapter 345, Revised Codes of Montana, 1935.

> "A board of county commissioners or county supervisors ordinarily exercises the corporate powers of the county. It is in an enlarged sense the representative and guardian of the county, having the management and control of its property and financial interests, and having original and exclusive jurisdiction over all matters pertaining to county affairs." (15 C. J. 456.)

The principle that the county commissioners have a supervisory authority over county officers to investigate the necessity of and reasonableness of charges and supplies was enunciated in

In re Hyde, 73 Mont. 363, 236 Pac. 248.

Report and Official Opinion of Attorney General, Volume 14, p. 283.

Report and Official Opinion of Attorney General, Volume 16, Opinion No. 10, p. 9.

The express terms of the pertinent part of Section 4605.1, Revised Codes of Montana, 1935, as amended by Chapter 42, Laws of 1941, are as follows:

> **"Request for Bids Necessary in Making Purchases Exceeding One Thousand Dollars ($1,000.00).** No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind, for which must be paid a sum in excess of one thousand dollars ($1,000.00) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; . . ."

It is apparent, from the wording of the above-quoted part of Section 1622.1, it is within the province of the county surveyor of such county to submit to the board of county commissioners for approval his proposal for the purchase of highway and bridge machinery and machinery, equipment and tools to be used upon highways and bridges and the supplies and materials to be used upon highways, bridges and causeways. In the event of the disapproval of the county commissioners in regard to any items and no agreement therein being reached, it is then incumbent upon the county surveyor again to submit alternative proposals of such items as he deems necessary.

In reading all of Section 1622.1, it is apparent the legislature had in mind the fact a county surveyor in a county of the class therein dealt with would be especially qualified to select the type, kinds and qualities of machinery, equipment, tools and supplies and materials needed by him to perform satisfactorily the duties required of him by said section.

I agree with your conclusions in this matter, and it therefore is my opinion all purchases by the county surveyor of highway and bridge machinery and machinery, equipment and tools to be used upon highways and bridges and all supplies and materials for highways, bridges and causeways are subject to the approval of the board of county commissioners.

The board of county commissioners enters into and executes all contracts for all county highway and bridge machinery and machinery, equipment and tools to be used upon highways and bridges, and all the supplies and materials for highways, causeways and bridges, subject to the limitations and provisions of Chapter 42, Laws of 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General