

No. 161

**COUNTY SURVEYOR—COUNTIES—COUNTY COMMISSIONERS—HIGHWAY MACHINERY—MACHINERY,  
Purchase of—BRIDGES—CAUSEWAYS**

**Held:** The county surveyors of all counties having a total registered vote of fifteen thousand (15,000) or over at the last general election shall have exclusive jurisdiction to 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 boards of county commissioners, and purchase and secure all highway, bridge and causeway supplies and materials with the approval of the board of county commissioners.

July 7, 1941.

Mr. Edward T. Dussault  
County Attorney  
Missoula County  
Missoula, Montana

Dear Mr. Dussault:

You have submitted the following:

“The precise question is whether the County Surveyor of Missoula County has exclusive jurisdiction in making purchases of machinery, materials and supplies out of the General Road Fund of Missoula County for highway purposes, when he thereafter obtains the approval of such purchases by the Board of County Commissioners.”

Section 1622.1, Revised Codes of Montana, 1935, insofar as pertinent here, provides:

“County surveyor’s duties in counties having total registered vote of fifteen thousand or over at last general election—salary. The county surveyor of all counties having a total registered vote of fifteen thousand (15,000) or over, at the last general election shall have exclusive control, supervision and direction of all highways, bridges and cause-

ways within his county, and in the exercise of such control, supervision and direction he shall keep all highways and bridges free and clear of all obstructions; cause highways to be graded, when needed, and maintain and repair the same; cause all bridges and causeways to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed; make all surveys; establish grades; prepare plans, specifications and estimates; keep accurate cost data; approve all claims against the county for all highway, bridge and causeway construction, maintenance and repair prior to presentation to the board of county commissioners; employ deputies, men and teams, and discharge at his pleasure such deputies, men and teams, and determine how, when and where such deputies, men and teams shall work; 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 . . . .”

Missoula County, at the time of the general election in 1940, had more than fifteen thousand registered voters entitled to vote at such general election. In accordance with Section 1622.1, Revised Codes of Montana, 1935, Mr. Chas. S. Dimmick, County Surveyor, thereafter and on or about the ..... day of November, 1940, assumed jurisdiction and control of the highways, bridges and causeways within Missoula County. (State ex rel. Durland v. Board of County Com'rs. of Yellowstone County, et al., 104 Mont. 21, 64 Pac. (2nd) 1060.)

It must be noted Sections 1622 and 1623, Revised Codes of Montana, 1935, were enacted into law in 1913 and thereafter at various times amended. Section 1622.1 was enacted into law in 1927, some fourteen years thereafter, as was 1622.2, which abolishes the office of road supervisor in counties having a total registered vote of fifteen thousand or over at the last general election, in which situation Missoula County now finds itself. In the construction of statutes, the intention of the legislature must be ascertained if possible, and according to Section 10520, Revised Codes of Montana, 1935, “a particular intent will control a general one that is inconsistent with it.”

When looking at Section 1622.1 and 1623 without taking into consideration the years when these laws were enacted, one can easily see the statutes are inconsistent. However, using the accepted rule in the construction of statutes, it is apparent the legislature intended Section 1622.1 to be the controlling statute in counties having a total registered vote of over fifteen thousand, and in such case Section 1623 should not be applied.

Particular attention should be given to the wording of Section 1622.1. It provides:

“The county surveyor . . . shall have **exclusive** control, supervision and direction of all highways, bridges and causeways within his county . . . approve all claims against the county for all highway, bridge and causeway construction, maintenance and repair **prior to presentation to the Board of County Commissioners** . . . 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.)

From the foregoing, it is my opinion the County Surveyor of Missoula County may make purchase of all machinery, materials and supplies out of the general road fund of the county for highway purposes with the approval of the Board of County Commissioners, and he must approve all claims against the county for all highway, bridge and causeway construction, maintenance and repair prior to the presentation of said claims to

the Board of County Commissioners. It follows, therefore, and it is my opinion the Board of County Commissioners had no authority to make purchases of highway, bridge and causeway machinery, materials and supplies. In other words, the County Commissioners should not, in the initial stage, make purchases. The Surveyor has this authority under the present law under which Missoula County is operating, and he alone can make the purchases at the outset; but such purchases must be approved by the Board of County Commissioners.

Sincerely yours,

JOHN W. BONNER  
Attorney General