

VOLUME NO. 35**Opinion No. 85**

COUNTIES—County surveyor, qualifications for office, who eligible; **COUNTY SURVEYORS**—Qualifications for office, who eligible; **OFFICES AND OFFICERS**—County surveyor, qualifications for office, who eligible. Article IX, sections 2 and 11, Constitution of Montana, 1889; Article IV, section 4, Constitution of Montana, 1972; sections 16-2401, 16-3301, 59-301, 66-2326, and 66-2336, R.C.M. 1947.

- HELD:**
1. A candidate for the office of county surveyor must meet all requirements set forth in Article IV, section 4, Constitution of Montana, 1972, and sections 59-301, 16-2401, and 16-3301, R.C.M. 1947.
 2. A candidate for the office of county surveyor must be at least twenty-two years old, a citizen of the state, a qualified elector of the state and county in which the duties of the office

are to be exercised or for which he is elected, a professional engineer as defined by sections 66-2326 and 66-2336, R.C.M. 1947, and he must have actively practiced engineering in a responsible position for the statutory period.

May 23, 1974

Mr. James Oleson
Flathead County Attorney
P.O. Box 1057
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Dear Mr. Oleson:

You have requested my opinion concerning the qualifications one must have to run for the office of county surveyor.

The Constitution of Montana, Article IV, section 4, 1972, sets forth who is eligible to run for public office in Montana. It states:

Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 59-301, Revised Codes of Montana, 1947, sets forth certain age and citizenship requirements. It provides:

No person is eligible to hold civil office in this state, who at the time of his election or appointment is not of the age of eighteen (18) years or older and a citizen of this state.

The general statutory qualifications for county office are found in section 16-2401, R.C.M. 1947, which states:

No person is eligible to a county office who at the time of his election is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

The specific qualifications for county surveyor are set forth in section 16-3301, R.C.M. 1947, which provides:

A county surveyor shall be a professional engineer, not less than twenty-two years of age, who shall have been in active practice of his profession for at least three years, and who shall have had responsible charge of work as principal or assistant for at least one year; graduation from a school of engineering shall be considered as equivalent to two years of active practice. All deputies must also have a practical knowledge of engineering.

It should be noted that in 16 **Opinions of the Attorney General**, no. 186, then Attorney General Nagle held that section 4835, R.C.M. 1921 (now codified as section 16-3301, R.C.M. 1947), violated Article IX, section 11, Constitution of Montana, 1889, because it imposed additional qualifications for the office of

county surveyor than those required specifically by Article IX, section 2, of the Constitution of Montana, 1889. However, section 16-3301, *supra*, was never repealed by the Montana legislature, nor was it ever held unconstitutional by the Montana Supreme Court. Section 16-3301, therefore, appears valid and in compliance with Montana's new constitution, which provides for "additional qualifications" as provided by the legislature.

The four basic requirements of section 16-3301, *supra*, for the office of county surveyor, in addition to those set forth in sections 59-301 and 16-2401, *supra*, are as follows:

1. Must be professional engineer. The county surveyor must be a professional engineer. The term "professional engineer" as used in the Montana Professional Engineers' Registration Act (hereinafter called the "Act"), is defined in section 66-2326, R.C.M. 1947, as

... a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

The Act created the state board of registration for professional engineers and land surveyors, which became the board of professional engineers and land surveyors, department of professional and occupational licensing, by Executive Reorganization Order 2-72, dated July 31, 1972, and effective August 1, 1972. Section 82A-1602 (11), R.C.M. 1947.

The requirements for registration as a professional engineer by the board of professional engineers and land surveyors are set forth in section 66-2336, R.C.M. 1947, which states in pertinent part:

The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer ...:

(1) As a professional engineer:

a.—Graduation in an engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers council for professional development, or its successor as an agency evaluating professional engineering curricula or equivalent curricula as approved by the board; and a specific record of an additional four years or more of experience in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to practice engineering (in counting years of experience, the board at its discretion may give credit, not excess of one year, for satisfactory graduate study in engineering), and by successfully passing an oral or written examination, or both, as the board may determine; or

b.—A specific record of eight years or more of experience in engineering work of a character satisfactory to the board, and successfully passing a written, or written and oral, examination designated to show that the applicant is competent to practice engineering; or

c.—A specific record of twelve years or more of lawful practice in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering and has had responsible charge of important professional engineering work for at least five years, and provided applicant is not less than thirty-five years of age.”

2. Must be twenty-two years of age. The county surveyor must be at least twenty-two (22) years old.

3. Must have active practice. To be properly qualified for the office of county surveyor, a professional engineer must have practiced engineering actively for a specific number of years.

Section 16-3301, *supra*, which was first enacted in Chapter 50, Session Laws of 1919, required that a county surveyor candidate must have practiced engineering actively for at least three (3) years, unless he was a graduate from a school of engineering, in which case he must have practiced actively for at least one (1) year. This requirement, however, has been superseded by sections 66-2326 and 66-2336, *supra*, which were enacted by Chapter 150, Session Laws of 1957, and which provide longer time requirements for the active practice of professional engineering than did section 16-3301. The requirements of sections 66-2326 and 66-2336 are, of course, subsequent to the enactment of section 16-3301. It is a long-established principle of statutory construction that earlier statutes to the extent of any repugnancy are controlled by later statutes. **State ex rel. Wiley v. District Court**, 118 Mont. 50, 164 P.2d 358 (1946). Furthermore, sections 66-2326 and 66-2336, *supra*, contain specific provisions relating to professional engineers who are mentioned only in general terms in section 16-3301, *supra*. It has been held by the Montana Supreme Court that where a statute deals generally with a given subject and a later one makes specific provisions relating to a certain phase of that subject inconsistent with the former, the latter is controlling. **Kester v. Amon**, 81 Mont. 1, 14, 261 P. 288 (1927); **Barth v. Ely**, 85 Mont. 310, 323, 278 P. 1002 (1929). In this instance, therefore, sections 66-2326 and 66-2336 are controlling.

Section 66-2326, *supra*, defines the term “practice of engineering” as

... any professional service or creative work requiring engineering education, training, and experience and the application of such special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, engineering planning service performed in connection with city, county, regional and state planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any

public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, and including such architectural work as is incidental to the practice of engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment, or communication lines or signal circuits, or electric power lines or pipelines.

4. **Must have had responsible position.** During the above-mentioned period of active practice, the candidate for county surveyor must have had responsible charge of work as principal or assistant for at least one (1) year.

THEREFORE, IT IS MY OPINION:

1. To qualify for the office of county surveyor, a candidate must meet all the requirements set forth in Article IV, section 4, Constitution of Montana, 1972, and sections 59-301, 16-2401, and 16-3301, R.C.M. 1947.

2. Such a candidate must be at least twenty-two years old, a citizen of the state, a qualified elector of the state and county in which the duties of the office are to be exercised or for which he is elected, a professional engineer as defined by sections 66-2326 and 66-2336, R.C.M. 1947, and he must have actively practiced engineering in a responsible position for the statutory period.

Very truly yours,
ROBERT L. WOODAHL
Attorney General