1953

The Law policy and practice of the Missoula County commissioners

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THE LAW, POLICY AND PRACTICE
OF THE MISSOULA COUNTY COMMISSIONERS

by

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B.A., University of California, 1948

Presented in partial fulfillment
of the requirements for the degree of
Master of Arts

MONTANA STATE UNIVERSITY
1953
This thesis has been approved by the Board of Examiners in partial fulfillment of the requirements for the degree of Master of Arts.

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 Chairman of the Board of Examiners

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 Date  Jan. 17, 1953
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PREFACE

County government has been referred to as the "dark continent" of American politics. It has been called a "wilderness of conflicting responsibilities in which there was no single officer who could be called the executive," and a scheme of government conceived in a spirit of negation. Another writer states that "county government is the most backward of all political units, the most neglected by the public, the most boss-ridden, the least efficiently organized and most corrupt and incompetent."  

There is undoubtedly some element of truth in these typical sentiments. The evidence is plentiful that the weaknesses of county government assume major proportions. Most state constitutional conventions have given little attention to the matter of county government. The traditional threefold division of governmental powers has been almost completely disregarded in the organization of county government. County courts are merely branches of the state judicial machinery. County officers are inclined not to investigate the law but to look back over the work of predecessors and

follow in their tracks. The few legislative functions vested in the county are assigned to a body whose work is almost wholly administrative. This agency, the county board, comes nearest to being the central governing body.

No attempt is made here to explore the complexities of many of these problems. Instead, a specific county government, that of Missoula County, Montana, has been studied in terms of major activities of its county board during two recent years. After examining historical backgrounds and the legal position of Montana's commissioners, the actual practice of the commissioners of Missoula County has been examined for the period January 1950 to August 1952, as revealed in official records, in an attempt to gain some insight into the processes of government in a reasonably typical Montana locality.

The County Commissioners Journal, Book A-1 of Missoula County, Montana Territory contains the oldest records of meetings of Missoula County Commissioners. The first recorded meeting took place on October 16, 1865 when a special session was held pursuant to notice. Present at the meeting were newly elected county commissioners H. W. Miller, F. L. Loveland and J. C. O'Keefe. H. W. Miller was elected chairman of the board at this meeting. Also at the meeting several "official undertakings" were approved.

3. Interviews with the Missoula County attorney and his deputy in May and August 1952.
and filed, and the board appointed the county attorney and
the superintendent of schools.

Missoula County has grown from a humble beginning to
a fourth class county. It has a population of 35,000 and
a property valuation more than seventeen million dollars.
This second portion of the study is based primarily upon
volumes V and W of the County Commissioners Journal of
Missoula County, and surveys policies and practices of the
county commissioners of Missoula County for approximately
two years, 1950-1952.
CHAPTER I

THE BACKGROUND OF MISSOULA

COUNTY GOVERNMENT

1. General Features of County Government

The origin and growth of the county.--The county appears as a local governmental unit in every state of the United States, and in all states except Rhode Island it is organized for the purpose of local administration. American local government had derived its forms directly from English institutions. The colonists adapted the English county and town to their new environment. At first there was no distinction between the central government and the local government of the colonies. In the small early settlements one government could function both as a local government and a central government. But as the colonies expanded beyond the original settlements, local government needs were met by the three distinct types of local government which persist to the present.

1. In Louisiana they are called parishes.


In the South, county government developed in a form quite similar to the English county. This type of county government allowed freeholders to elect delegates to their general colonial assembly. Meanwhile, the New England colonists adapted the other element of English local institutions; from the beginning they accentuated the town as a local unit of government. The middle colonies developed a mixed system of local government. Here the towns had more importance and more autonomy than the parishes of the South.

These early forms of local government adequately served the needs and desires of the colonists. During the eighteenth century the English authorities seldom interfered with local organization and functions, and since the state governments made little change in these institutions after declaration of independence, the early forms of local government adopted by the colonists have persisted. During the early nineteenth century settlement of the Mississippi valley "the institutions of local government in moving westward roughly followed the parallels of latitude." Continental expansion westward was completed late in the century and by 1900 most of the present county governments were in existence. Since 1900, "the county setup remains practically


unchanged."  

The nature of the county as a creature of the state, subject to state control, has limited its inherent capacities for progress and growth due to the need for state approval of any improvement measures it may wish to initiate. This has meant that except as limited by the state constitution, state governments have been "the sole determiner of county organization and power." Constitutions in about two-thirds of the states contain provisions which limit the powers exercised by the legislatures with respect to county government. These documents commonly direct the election of certain county officers, require uniformity of the county organization, regulate creation of new counties and their boundaries, define the powers and duties of the county, and impose restriction on certain fiscal matters.

Statutory provisions for alternate forms of county government are more common than home-rule arrangements. A


7. Ibid., 69. Snider, op. cit., 74: New services which the county has assumed include protection and conservation of natural resources, parks and forests, libraries, planning and zoning, recreational centers, playgrounds, housing, and airport areas. Older functions of education, highway construction and maintenance, and the welfare and poor relief have been assumed by the state.


number of states in the last two decades have enacted optional legislation by which the voters of a county in a popular referendum may change their form of county government. Some states have statutes whereby one of several forms may be adopted by a county. Other states, including Montana, have merely provided an alternative form which may be adopted in place of the "standard" form of organization. This alternative is usually, as in Montana, the manager form of government.10

The county board.—There are certain characteristics which seem to be common to all county governments in the United States. (1) All county governments must have separate governing bodies to administer local activities constantly throughout the year. (2) A local unit should be independent of other local units. A board to supervise on behalf of another local organization is not a true governing body. (3) The local government must be able to raise revenue by taxation, and to finance services by charging fixed rates or by special assessment.11 In every county there exists a governing body for the management of local functions which is generally known as the county board. County boards are commonly classified into two types.

10. Mont. rev. Code 1947, § 16-3301: "Any county in the state is hereby authorized to adopt a county manager form of government as herein defined . . . ."

according to size. Members of the small board are elected at large in each county. About eighty per cent of the counties have boards of from three to seven members.\(12\) This type prevails among the New England, Atlantic, Eastern and Pacific states. In the middle West, the county boards usually have thirty or more commissioners, elected from city or township districts within the county.\(13\)

In recent years most observers have favored the small boards. "Undeniably the great majority of candid and unprejudiced persons who have investigated and compared the results of the two favor the small board. The tendency of recent legislation is also in that direction."\(14\)

2. Historical Sketch of Missoula County

The oldest county organization known by the name of Missoula County came into existence in 1862 as a subdivision of the Washington Territory. About thirty men voted in an election July 14, 1862, electing Grenville Stuart and Thomas Harris as the two county commissioners of Missoula County, Washington Territory.\(15\) The county seat was at Hell's Gate Ronde, site of the city of Missoula, and since

\[\begin{align*}
12. & \text{Holloway, op. cit., 283.} \\
13. & \text{Kimball, op. cit., 321.} \\
14. & \text{C. C. Maxey, County Administration, 4 (1919).} \\
\end{align*}\]
that time the seat of Missoula County.

In 1863, Missoula County became a part of the newly created Idaho Territory. Large numbers of people were attracted to the gold areas of Bannack and Virginia City a year later, in 1863 and 1864, creating the need for stronger government. "It was determined that the territory of Idaho was too large to afford the convenience of a civilized commonwealth to people occupying so vast an area." 16

Montana Territory was organized in 1864. 17 The boundaries established for Missoula County by legislation of November 20, 1867 were unchanged 18 until Montana was admitted as a state in 1889. 19 Missoula County of the

16. Wilbur F. Sanders, speech delivered May 24, 1889, Manuscript in Montana Historical Library, Helena, Montana.

17. The first territorial legislature met at Bannack City on December 12, 1864. In the elections which followed the formation of the territory, the people chose their county seats and the territorial legislature enacted 113 sections of statutes for county government in the territory. These laws vested responsibility for county government in three elected commissioners, "a practice found sufficiently satisfactory to continue to the present day." See K. R. Renne, and J. W. Hoffmann, The Montana Citizen, 47 (rev. ed., 1949).

18. The Montana territorial legislature in 1865 established nine counties, determined the boundaries and gave them their official names. These nine counties were Deer Lodge, Chouteau, Big Horn, Gallatin, Eiger, Jefferson, Madison, Beaverhead and Missoula County. Missoula County, Montana Territory, was created in February 2, 1865. See the Bannack Statutes 523.

new state included about one seventh\textsuperscript{20} of the state's 146,316 square miles and was situated in the northwest corner of Montana. By subsequent divisions in 1893 and 1905, Flathead, Granite, Ravalli and Sanders counties were formed at least in part from Missoula County.\textsuperscript{21} Mineral County by petition and election was separated from Missoula County in 1914, and Lake County by similar process in 1923.\textsuperscript{22}

\textsuperscript{20} Missoula County, at this time, contained about 20,500 square miles.

\textsuperscript{21} Prior to 1911 new counties could be created only by act of the state legislature, a slow and difficult process. In 1911 a state law allowed people residing within the area of a proposed new county to create the new county by favorable vote, if the property values of the old and new county were above the minimum valuations required by law. This law was changed in 1913, 1919 and in 1929 with each new law stipulating different requirements for the new counties.

\textsuperscript{22} The last two counties created in the state were Lake and Petroleum County. This brought the total to the present number of fifty-six, and probably indicates that "the maximum number of counties needed in the state has been reached." See P. R. Renne, "Montana County Organization, Services and Costs," Bulletin 298, Agricultural Experiment Station, Montana State College, 12 (April, 1935).
3. The Powers and Functions of Montana Counties

A county in Montana.--A county in the United States is a sort of hybrid which defies exact classification. In Montana, as in other states, the legal position of the county is wholly subordinate to the state. The Montana county is a unit of government whose powers are derived from the state constitution and statutes. "Every county is a body politic and corporate, and as such has the power specified in this [Montana] code or in special statutes, and such powers as are necessarily implied from those expressed." 24

A county in Montana, as in most other states, has been called a "quasi-corporation," 25 to distinguish it from a municipal corporation which has been described as "the complete body politic and corporate, that is the municipal corporation created by law, to administer community government." 26 While municipal corporations have delegated authority to administer local affairs by local legislation and regulation relevant to the specified local area, the county lacks these distinguishing characteristics of local legislative and control powers; it possesses "only such


25. Hersey v. Neilson, 47 Mont. 132, 131 Pac. 30 (1913) at 32: "It is quasi-corporate in character."

powers as are expressly provided by law or are necessarily implied by those expressed." 27

Because of its relationship to the state, the Montana county is a public corporate entity as distinguished from a private corporation. As a public corporation, it lacks any "common purpose" other than government, while a private corporation "is one created for the advancement of some private end." 28 Ultimately it must be said that the county is a public entity, but not fully corporate; rather, it is a civil division of the state created by the state for purposes of political and judicial administration, created without the consent of the people who inhabit it, and vested with certain corporate powers. 29

General powers of the county.—The general powers which the board of county commissioners in Montana can exercise as the general public agent and the chief administrative agency of the county are succinctly stated by statute; it has power:

1. To sue and be sued.
2. To purchase and hold lands within its limits.
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.

27. Franzke v. Fergus, 76 Mont. 150, 245 Pac. 962, 964 (1926).
29. Hersey v. Neilson, 47 Mont. 131, 131 Pac. 31 (1913) at 32: "It is well established law that a county is an involuntary corporation for governmental purposes."
4. To make such orders for the disposition and use of its property as the interests of its inhabitants require.

5. To levy such taxes for the purpose under its exclusive jurisdiction as are authorized by this code or by special statutes.

Legislative control of Montana counties is complete, except as restricted by the constitution in express terms, or by implication. In doubtful situations, the legal

30. Snider, op. cit., 76, suggests that logical new sources of revenue for the counties would be such non-property taxes as sales tax and income tax.


32. Mont. Const. Art. V, sec. 26: "The Legislature shall not pass local or special laws in any of the following enumerated cases: locating or changing county seats; regulating county or township affairs; prescribing the powers or duties of officers in counties. In all other cases where a general law can be made applicable, no special law shall be enacted." Holliday v. Sweet Grass County, 19 Mont. 364, 48 Pac. 553 (1897): "Acts for the purpose of organizing the new county do not come within either the letter or the spirit of the inhibitions of section 26, Art. V."

State ex rel. Redmond v. Meyers, 65 Mont. 124, 210 Pac. 1064 (1922) at 1066: "Section 26, Article V does not prohibit the enactment of special laws altogether. It only prohibits the enactment of such a law where a general law can be made applicable."

Mont. Const. Art. V, sec. 38: "The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad."

Mont. Const. Art. V, sec. 39: "No obligation or liability of any municipal corporation shall be remitted, released or postponed."

presumption is usually against exercise of power by the county. 34 The county board is a governing body of limited jurisdiction and before an action can be taken by the commissioners the law must state the authority for the action or the implication of such authority must be clearly defined from some express grant of power. 35

4. Election and Term of Office of Montana County Commissioners

Organization and meetings of the board.—A board of county commissioners is the legislative and executive authority of the Montana county; it also exercises minor judicial and ministerial powers of the general government. The board of commissioners consists of three members elected for six-year terms. In order to maintain some continuity of experience, the constitution provides that one commissioner shall be elected every two years. Since 1929 each county in the state is divided into three districts, "as compact and equal in population and area as possible." 36

34. Sullivan v. Big Horn County, 66 Mont. 45, 212 Pac. 1105, 1106 (1923).

35. State ex rel. Gillett v. Cronin, 41 Mont. 293, 109 Pac. 144 (1910).

36. Mont. Const. Art. XVI, sec. 4. In a newly organized county the county commissioner elected to district number one is to have a term of office for two years, and the commissioner elected to district number three is to have a term of office for six years, therefore providing that one commissioner is to be elected for a full term to take the place of the retiring commissioner.
and numbered districts one, two and three.

A commissioner in Montana must be an elector and resident for two years in the county he represents, and he must also possess the other qualifications necessary to hold a county office in this state. If a vacancy should occur in the board from a failure to elect, or for other reasons, it is the duty of the district judge of the district in which the vacancy occurs to fill the vacancy by appointment until the next general election. The commissioners,

Art. XVI, sec. 7, of the Montana Constitution is an amendment made in 1922. This amendment permits the state legislature by general or special act to provide any plan or form of government for counties, subject to referendum in the individual county. It was this amendment which permitted the legislature of 1931 to set up the county manager plan of government, to become effective in any county if approved by a majority of all those voting on the question. See Mont. Rev. Code 1947, § 16-3901.


38. A person eligible for county office in Montana must at the time of his election be twenty-one years of age, a citizen of the state and of the United States, an elector of the county in which he seeks office, and shall have resided in the state for at least one year before his election or appointment. See Mont. Const. Art. IX, secs., 2, 7, and 11.

Mont. Const. Art. XVI, sec. 4: "No one shall be elected as a member of said board [of commissioners] who has not resided in said district for at least two years next preceding the time when he shall become a candidate for said office."

39. Missoula County Attorney Opinion to the commissioners, January 6, 1950: "Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election." All the county attorney opinions cited in this work are the
in turn, fill vacancies in county, township and precinct offices by appointment.

A chairman of the board of county commissioners is elected by a majority vote of the three members. The board of county commissioners must have a chairman to preside over every meeting of the board. If the chairman of the board is unable to preside, statute requires the members present to designate one of their number to act as chairman temporarily. The meetings of the board are open to the public, and the books, records, and accounts which are kept

opinions of Missoula County attorneys. Therefore, subsequent citations of county attorney opinions will be County Att'y. Op. to the Comm'rs, with the appropriate date.

State ex rel. McGowan v. Sedgwick, 46 Mont. 187, 127 Pac. 94, 95 (1912) upheld the general rule in Montana that elections of local officers should be held whenever possible.

40. Neither Montana statutes nor Montana Supreme Court decisions state how a chairman of the board is to be elected. The Missoula County Board at the meeting of January 7, 1952 elected a chairman in the following manner: Commissioner Coy moved that Commissioner Hawn be chairman of the board. The motion was put to a vote and Hawn was unanimously elected. See Commissioners' Journal, vol. W, 508, January 7, 1952. The records of the proceedings of the commissioners are kept in volumes numbered and filed alphabetically in the office of the clerk and recorder at the court house of Missoula County. All the citations from the commissioners' journal in this study refer to volumes V and W, with page number and date. The above citation would be W, 508, 7 Jan. 52, and subsequent citations are in this form.


42. A majority of the body, that is, two commissioners, constitutes a quorum.
in the office of the clerk are open to public inspection.  

The elected clerk-recorder of each county is the secretary of the board. He makes full record of all the proceedings of the board which must be signed by the chairman of the board and the clerk. The clerk is required by law to record votes where there is a division of opinion, sign orders, make a record of the county treasurer's reports, and to perform various other duties required by law or by a rule or order of the board.  

The clerk as secretary of the board prepares the "minute book" which records all orders, decisions and proceedings of regular and special board meetings. The clerk of the board is directed by mandate from the board itself as to what shall be entered in the minutes.  

The Montana Supreme Court has held that oral testimony will be admitted as proof of what the board has done; and the failure of the clerk to record an action of the board does not prevent this action from being proved by parol evidence.  

43. Williams v. Commissioners, 23 Mont. 360, 72 Pac. 755 (1903) at 756: "The statutes do not vest the power of the county in three commissioners acting individually, but in them as a single board; and its chairman, unless lawfully authorized by the board to do some act, or acts, has no more power than has any other member of the board; and its minutes should be kept in such manner as to give true and correct information to all inquiring concerning county affairs."


46. Idem.
The board of county commissioners meets in regular session on the first Monday of each month. At these meetings the commissioners attend to the usual business of the county which may come before them. The meetings of the board are further described below in the chapter on the classification of the county. 47

5. Powers and Duties of Montana County Commissioners

General powers, express and implied.—The board of county commissioners "is a body of limited powers, and must in every instance justify its actions by reference to the provisions of law defining and limiting these powers." 48 This includes not only powers expressly granted by statute, but also powers "necessarily implied by those expressed." 49 This principle is well established in Montana adjudication. The board must show that it acts either by express grant of power, or by necessary implication from such powers. This aspect of county authority reflects the quasi-corporate nature of the county.

Property powers.—One of the important duties of the board is to manage and to supervise the maintenance and care

47. See chapter four for the discussion of the regular and special sessions of the board.


of all the county property. The property powers of the commissioners are discussed more in detail below.  

Powers to contract.--In Montana the board possesses its powers to contract by express authority or by clear implication. The board has the direct and implied power to "make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers." 51 These powers to contract are more fully studied in a following chapter. 52

The liability of the county and its commissioners. The board of county commissioners has jurisdiction and power . . . to direct and control the prosecution and defense of all suits to which the county is a party." (Mont. Rev. Code 1947, § 16-1017)

Since the governmental capacity which the counties possess is a governmental power exclusively given them by the state, exercise of this portion of the state's sovereignty cannot make the counties liable for injuries resulting from this action. 53 In Montana as in most jurisdictions, it is the general rule that counties in the absence of statutory

50. See Chapter two on county roads.


52. See chapter two on the purchase and sale of county property.

53. McQuillen, op. cit., vol. VI, 5330 (1913): "There is a distinction between municipal corporations and quasi-municipal corporations as to liability for torts, and . . . the general rule is that the latter are not liable for torts."
or constitutional provision to the contrary are not subject to liability for torts committed while exercising a governmental function. This immunity from tort liability includes failure to perform a duty, negligent performance of duty, and injuries arising from defective building conditions, as well as acts or inaction in the maintenance and construction of a public improvement under the direction of the county in a governmental function. The scope of this immunity of the county, however, does not extend further than its office as governmental agent for the state. "A county . . . is liable for its torts when it is acting, not as a governmental agent, but as a private corporation, or in a proprietary capacity."

The power which the commissioners exercise over many affairs of the county may be exclusive; and "within the scope of their powers they are supreme if the course pursued is reasonably well adapted to the accomplishment of the end proposed." While the board must not exercise

54. Brief for Appellant, Johnson v. City of Billings, 101 Mont. 462 (1936) at 465: "Counties in Montana are not subject to liability for torts. There is no statute in Montana, expressly or by implication, imposing liability upon counties for torts and, therefore, counties in this state are within the general rule stated in 20 C. J. S. 1067, section 215: (See Sullivan v. Big Horn County, 56 Mont. 44, 212 Pac. 1105; Smith v. Zimmer, 45 Mont. 232, 125 Pac. 421; . . . Yellowstone Packing etc. Co. v. Hays, 83 Mont. 1, 11, 268 Pac. 555;)

55. 20 C. J. S. 1070.


57. State ex rel. Bowler v. Board of County Commissioners,
its discretion in an unlawful manner, the court is without authority to interfere with the discretion of the board when there is no fraud or abuse. "We cannot compel the board's discretion, but we can compel the exercise of it in a lawful manner."\textsuperscript{58}

The duties of the commissioners are fixed by statute, and unless the law designates a liability the board is not liable for damage incurred in the exercise of its judicial and legislative functions unless malice or corruption is proven.\textsuperscript{59} The board is not liable to individuals for the negligence or omissions of acts in the performance of its official duties.\textsuperscript{60} The same is not true for members of the board in many states when it acts in a ministerial capa-

\begin{quote}
106 Mont. 251, 76 P. 2d 648 (1933) at 652: "Courts are without power to interfere with the board's discretionary action within the scope of its authority or the exercise of powers conferred by statute on the sole ground that its action is characterized by lack of wisdom or sound discretion . . . . and, unless fraudulent, or so arbitrary as to amount to a clear and manifest abuse of discretion, the board's action is final."
\end{quote}

\textsuperscript{58} State ex rel. Lien v. School District, 106 Mont. 223, 76 P. Ed 331, 332 (1933).

\textsuperscript{59} State ex rel. Bowler v. Board of County Commissioners, 76 P. Ed 652; see 20 C. J. S. 884.

\textsuperscript{60} Johnson v. City of Billings, 101 Mont. 462, 54 P. Ed 579 (1933) at 583: "We are not unmindful of the fact that the great weight of authority is in favor of total immunity of counties;" at 584: "... it will be liable to . . . any person . . . [for] the negligent performance of any duty that is not public and governmental in nature."
city. Under statutes of various states, county commissioners have been held liable for ministerial acts of misfeasance or nonfeasance resulting in injury.  

61. Black, Law Dictionary 781 (2d ed. 1910): "A ministerial duty is one in respect to which nothing is left to discretion; . . . It is a . . . definite duty . . . proved to exist and imposed by law."  
62. Johnson v. City of Billings 54 P. 2d 531: "On the theory that a county cannot be sued . . . we are not precluded from holding a county liable for the torts of its employees, for the legislature has specifically granted to counties the power to 'sue and be sued'."  
63. 20 C. J. S. 849. In Montana, following the doctrine in the Lien, Bowler and Johnson cases, it would appear the commissioners would be liable for ministerial acts of misfeasance or nonfeasance resulting in injury.
CHAPTER II

THE MANAGEMENT OF COUNTY

PROPERTY

Counties hold their property on behalf of and for the governmental purposes of the state. Such property is defined by statute to include "any and all real property acquired by the county in purchase, by tax deeds, legal proceedings or however acquired." Subject to certain statutory limitations and restrictions the board of county commissioners in Montana may acquire and dispose of county public property. The board, also, has the power and duty not only to control the county's

1. 7 Cal. Jur. 495.


3. Mont. Rev. Code 1947, sec. 16-1007: No purchase of real property exceeding $100 must be made unless the value of the same has been previously estimated by three disinterested citizens of the county.

sec. 16-1009: Sale of real or personal property in value exceeding $100 must be at public auction.

sec. 16-1030: The board can lease only such county property as is not necessary to the conduct of the county's business and for which immediate sale cannot be had.
property, but also subject to limitations prescribed by law, to represent the county and manage its business. The board has the power to erect necessary public buildings and to maintain the jail, courthouse and county hospital. The board has charge of the public works program of the county and must locate, construct and repair the most important roads and principal bridges in the county. This responsibility also bears with it the duty to erect and maintain the important dikes and levees, ditches and drains of the county.

4. Mont. Rev. Code 1947, sec. 16-1024, as amended, Laws 1949, C. 144, sec. 1. The board can represent the county in the management of its business in all cases where no other provision is made by law.

sec. 16-1025: The board can make and enforce such rules as are necessary for the transaction of the county's business.

sec. 16-1018: The board can insure county buildings in the name of and for the benefit of the county.


7. The duties of the commissioners in Montana include many general and special functions impossible to cover in detail in this work. See C. G. Manning, Government in Montana, 89 (Typescript in Montana State University Library, 1928) for the financial activities of the board. The financial activities entail the levy of taxes, the voting of appropriations, arranging the credit and borrowing for the county through bond issues; and the board serves as a board of equalization to which the taxpayers tender their protests of property valuations.

See Renne, op. cit., 27, 28, for discussion of other powers which relate to elections, appointment and supervision of county officers. The board has charge
l. Notices and Petitions on County Roads and Streets

"The board of county commissioners has the power to lay out, maintain, control and manage public highways... within the county... " (Mont. Rev. Code 1947, § 16-1004)

"Boards of supervisors are authorized to acquire by purchase, condemnation or otherwise, land for roads and highways, and to lay out and maintain them... Furthermore, supervisors are empowered to make and enforce regulations for the protection, management, control and use of public highways... " (7 Cal. Jur. 457)

In the early summer months the Missoula County commissioners can expect to receive petitions from residents of outlying districts of the county, requesting that a certain county road be closed. Thus, on April 28, 1950 the board received, examined and ordered filed a petition to vacate a public road from Greenough to Clearwater. The records of the proceedings of the county commissioners for the two

of the elections, whether they be on the county, state or national level. It must mark out the voting precincts, establish the polling places, appoint election officials, and prepare and distribute election ballots for both the primary and general elections. The board is directed to see that the other county officers faithfully discharge their duties and to prosecute them if they fail to do so.

8. The petition is an informal written notice sent to the board requesting some action which the petitioner believes is within the jurisdiction of the board, and which the petitioner asserts to be for the good of the county.

9. 58, 28 April 50. In this instance the clerk was instructed by the commissioners to forward a copy of the petition to the State Highway Commission to ascertain if they had interest in the road.
years examined reveal receipt of no petitions to open or to create a new county road. Any resident of Missoula County has the right to petition the board of commissioners. The duty of the board is to take notice of the petition, and if possible to investigate the facts. Road petitions, like other petitions, are regularly examined and filed by the Missoula county board.

Evidence indicates that after the board has received an appeal to vacate a road it takes no further action on the request for several weeks, in order to allow response from other interested residents. In about two weeks the board commonly receives several petitions protesting abandonment of the road. After such protests have been filed, the board personally inspects the area of the road. The county engineer usually accompanies the board, and frequently the board reconvenes in the courthouse on the day of the trip to pass a motion granting or denying the petition. An overruled petition need not leave the applicant without recourse, for a motion of the board may object to the request "at this time" and leave the way open for the petitioner to enter a later appeal. The opposing parties in the matter of a petition are usually not informed by the

10. The protesting petitions are often signed by many taxpayers of the area. On May 11, 1950 the board received a petition signed by taxpayers in the Greenough and Clearwater area protesting vacating and abandoning the public road between Greenough and Clearwater. W, 66, 11 May 50.

11. W, 72, 24 May 50.
board of the time of the inspection trip. It is clear, however, that the Missoula County board does not usually take action on the request without inspecting the area.  

A road viewers board.--When a petition is received by the board from many residents of the area to close a certain road, the board may choose to have a special "road viewers board" inspect the right-of-way and recommend the action the commissioners should take. The functions of such a body supplement the regular activity of the commissioners, and render a more thorough service to the county. The one road viewers board in Missoula County that came within the purview of this study was created in the summer of 1950. It was made up of two members, one the county engineer, and the other a county commissioner. The members of such a board are appointed by the chairman of the commissioners, and serve as road viewers until their task is completed. It is the specific function of the special body to "view a portion of the county road" and to render a report which advises the commissioners what action to take.

On May 19, 1950 a petition was received to close a certain road known as the Old Rock Creek Road. Road viewers

12. The clerk is instructed to notify the petitioner by registered mail of the denial or grant of his petition.

were appointed a month later. After another six weeks road viewers Bourdeau and Hale submitted their report, recommending that the portions of the road be closed.

Closing and vacating county streets and alleys. "We wish to advise you that the commissioners may, in their discretion, abandon any street, or any portion of any street." County Att'y Op. to the Comm'rs, 24 Mar. 52.

Streets and alleys near but not in the city limits of Missoula are under the control of the Missoula County Commissioners, and all petitions to close or vacate such streets are to be directed to this governing body. A petition to close a street or alley in the county must be signed by all the owners of lots on the street or alley. This is true except when the interests of a nearby school is involved; then the signatures of seventy-five percent of the owners is sufficient. As might be expected, applications to vacate a road declare that abandonment can be done with-

14. W, 68, 19 May 50. The petition was received May 19, 1950 and the board was created June 24, 1950.

15. W, 101, 24 June 50. Chairman Bourdeau appointed himself along with Hale to serve as road viewers.

16. The board takes no action on vacating or closing streets within the city limits. "The city hall supervises that area as that section is in the city limits." W, 416, 23 Aug. 51.

17. County Att'y. Op. to Comm'rs, 4 April 49: "Section 5306 R. C. M. as amended by Chapter 26 of the 1945 Session Laws is the applicable section which requires 100% of the property owners except where school purposes are involved" to sign the petition.
out detriment to the public interest.

Montana law requires that before such a petition is granted, notice must be published or posted in three public places, with the information when the petition will be acted on, and the street, alley or part thereof, asked to be vacated. The publication or posting of the petition must take place at least one week before the petition is acted on, in order to allow a public hearing. Any resident of Missoula County interested in the street or alley may appear at the hearing to favor the petition or to enter a protest. While the Missoula County Board takes cognizance of views expressed at a public hearing, the commissioners may grant a petition in the face of opposition. The board has declared that it will take action which "appears to be in the best interest of Missoula County."

Where the county has opened a public street it "cannot appropriate the land which it occupies to other purpose after lots have been sold on the strength of a dedication for a certain purpose." The issue was raised when a Dr. Reineke petitioned in January, 1952, to buy six feet of the South side of Powell Street, near the city of Missoula. The

19. At a hearing on June 2, 1950 two property owners appeared in favor of closing an alley. There being no objections, the motion was carried. W, 83, 2 June 50. All closed alleys are subject to the use of public utilities. See Mont. Rev. Code 1947, § 11-2301.
20. Commissioners' resolution, W, 600, 15 April 52.
county attorney advised the commissioners, as noted above, that the portion of the street could not be sold to Dr. Reineke. Reineke then entered a petition to close Powell Street between Raymond and Gilbert Avenues, and this petition was denied. An alternative suggestion was to abandon part of Powell Street. This proposal was eventually accepted, but on condition that six feet of the South side of Powell Street would be abandoned only if the petitioner, Dr. Reineke, would deed to the county an equal amount of land on the opposite side of the street. One commissioner protested this arrangement on the ground that "this action . . . would set a precedent whereby the county could be making many changes for the convenience of various people."22

When the Missoula County Board deals with the notices and petitions on the county roads, it is always careful to follow the Montana law. Nor does the record indicate that personal interests affect the decisions of the board. However, in the matter of viewing roads, it would seem that Chairman Bourdeau and Surveyor Hale in the summer of 1950 might have performed their duty early in June, so that the board could act on their recommendation before August. Apparently, every Missoula resident present at the public hearings held by the commissioners concerning streets and

22. W, 571, 25 Mar. 52. Commissioner Duncan gave this reason for opposing the action.
alleys is given full opportunity to enter his opinion.

2. Negotiation of Employment Agreements

"County boards have implied power to employ agents or servants in proper cases . . . "
(20 C. J. S. 1013)

The maintenance of the public roads and bridges within the county makes necessary that the Missoula County Board employ workmen in addition to the regular administrative personnel to complete the task of general road supervision. The commissioners find their main source of labor with three local unions. Each summer before completion of the budget the board negotiates agreements with the International Union of Operating Engineers, the Chauffeurs, Teamsters and Helpers Union, and the Machinists Union.

The commissioners cannot sign a contract with any union.23 It must reach the settlements with the unions through agreements completed with representatives of the local organizations. The board maintains a wage schedule with the International Union of Operating Engineers which is automatically renewed each year unless either party desires to alter or terminate the agreement.24 Ordinarily,

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23. W, 389, 19 July 51: This statement in the Commissioners' Journal is without statute citation. 20 C. J. S. 1014: "A county board cannot so contract with an individual for services as to destroy or impair its power to contract with other individuals to perform similar services."

24. This cannot be a contract for it contains provision that either party at will can alter or terminate the agreement.
the wage schedules agreed upon by the county and the unions are attained by informal negotiation between the commissioners and union representatives. The commissioners must formally approve any wage schedule agreed upon.

Three policies seem to guide the Missoula County Board in dealing with unions and wages: (1) The commissioners have entered into only one terminable wage agreement, renewed from year to year. This is the negotiation with the International Union of Operating Engineers. (2) The wage increases are initiated by the unions, but the commissioners usually seem to be amenable. A union representative and the board reach the agreement by informal negotiation. (3) Non-union workers in the employ of the county share union-gained increases.

3. Purchase and Sale of County Property

"It is for the board to decide, within the limits of the law, how the purchase and sales shall be made." (County Att'y. Op. to Comm'mrs, 13 Feb. 51)

25. W, 385, 12 July 51: This wage schedule is between the County of Missoula and the International Union Local 913 of Missoula.

26. On July 16, 1951 a wage schedule and working agreement was presented to the board for the Chauffeurs, Teamsters and Helpers Union Local 448, and the Machinist Union Local 1434. On July 20, 1951 the board granted an hourly wage increase to apply to all employees in the Engineers and Teamsters Union.

27. W, 389, 20 July 51: "Motion carried that the employees in the Road and Bridge Dept. be given a 17¢ per hour wage increase." This increase was gained by the efforts of the Engineers and Teamsters Union.
The board of county commissioners can contract for the work necessary to care for and manage the affairs of the county and to preserve the property of the county. The board has the express power to contract for printing, books and stationery for the county. The board can make insurance contracts for the benefit of the county. The board may borrow money upon the credit of the county. The county in the management of its business is represented by the board, and in this capacity it executes all acts expedient to the competent fulfillment of this duty.

Competitive bidding.
"The board of county commissioners has jurisdiction and power . . . to purchase . . . personal property necessary for the use of the county . . . (Mont. Rev. Code 1947, § 16-1027)

The Missoula County Board, as supervisor and custodian of the county property, has authority to purchase such equipment, machinery, appliances and vehicles as it feels necessary adequately to supply the county. "The board has the discretion to act in such matters and its discretion should not be

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32. 7 Cal. Jur. 500: Only the board, or agents and officers acting under their authority or authority of law, can exercise the contract power of the county. A contract entered into by the board is a contract of the county and is enforceable according to the terms of the contract.
questioned in the absence of proof of an arbitrary or illegal use thereof."33

Montana law governs the purchase of certain materials and equipment by the county, stipulating that the sale to the county must be accomplished by competitive bidding.34 The Missoula County Board has asked and obtained from the county attorney several interpretations of this law. The commissioners are advised in these opinions that section 16-1803 must be construed strictly and is not to be extended beyond its clear implication. But one opinion states that "substantial compliance with the statutory requirements is sufficient."35 The result of this counsel to the board is a routine of procedure which rarely varies, in substantial compliance with the law.36

The call for bids is published by the commissioners

34. Mont. Rev. Code 1947, §16-1803, as amended, Laws 1951, C. 123, sec. 1: "No contract shall be entered into between a board of county commissioners for the purchase of . . . any materials or supplies . . . for which must be paid a sum in excess of two thousand dollars ($2,000.00) without first publishing a notice calling for bids for furnishing the same."
36. When the board purchase equipment in value under two thousand dollars, and not within section 16-1803, the principle of competitive bidding is not closely adhered to. For instance, a letter from the chairman of the board informing a business establishment the county has called for bids may prompt an offer from the company which will readily be accepted by the board. (W, 53, 11 April 50).
well before the final day to receive the bids. The business concerns interested are instructed to submit their sealed offers to the office of the clerk and recorder. On the final date the commissioners open the bids, and the board usually accepts the offer of the lowest and best responsible bidder. The Missoula Board, however, does not always find a responsible bidder, and reserves the right to refuse all the offers. At other times, the board "takes them under advisement."

Notice of Sale; sale of personal property.
"The board of county commissioners . . . shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business." (Mont. Rev. Code 1947, § 16-1009)

When the Missoula Board possesses equipment which in its opinion is no longer necessary for the use of the county, it can sell the equipment at public auction. From time to time the board offers used or unwanted county property at auction. In April, 1951 the county offered an old radio for sale. Property to be sold, such as the radio, is appraised for value, and a notice of sale is published. The equipment is usually sold to the highest bidder on cash terms. The bid is expected to be above the appraised value.

37. W, 34, 6 Mar. 50.
W, 75, 29 May 50.

38. W, 39, 22 Mar. 50.

39. W, 324, 30 April 50.
Sale of tax deeds.--Some taxpayers in Missoula County, as elsewhere, fail to pay taxes. Twice a year, in December and June, the county treasurer must deliver to the county clerk a complete list of all persons and property owing taxes. In June of each year the county treasurer makes a similar list of delinquent tax property and designates that property which, due to delinquent taxes, is subjected to sale at a public auction, or to county acquisition of the land by tax deed.

Montana statutes outline a clear and exact policy to acquire and sell tax deed property. Since the general property tax is the principal source of local revenue, the Montana legislature, like others, has carefully defined the method by which the counties can acquire and sell tax deed property listed on delinquent tax rolls. The Missoula County Board closely follows these laws so the procedure for purchase and sale of tax deed land rarely varies.

When the public auction is held the intent is to sell tax delinquent land in its entirety; however, in the event the first day of the sale produces no purchaser for certain lands "the property assessed must be struck off to the county


41. Manning, op. cit., 90: The tax levy is figured when the net expense of the county government is divided proportionately among the owners of property with taxable valuation. The county treasurer notifies and levies one-half of the taxes in November, and one-half of the taxes in May.
as the purchaser." 42 A certificate of sale is issued to the board in this event, and the board, as directed by statute, 43 "does all things necessary and in accordance with section 2209.1 and amendments thereof, in order that the county may acquire land for non-payment of taxes." 44 That is, the board must apply to the county treasurer for a tax deed for the property on which it possesses a certificate of sale. Thus the Missoula County board, on 23 August 1951, desiring to take tax deeds on all property upon which the county held certificate of tax sales, directed the clerk to obtain the list from the county treasurer. In accordance with the resolution passed by the board on August 28, 1951, 45 the board authorized the clerk to post the list of the delinquent tax property upon which the county would obtain a tax deed. The posting and publication was to be completed November 20, 1951. In the same instance, since the proper notices and publications had been given, the commissioners, on December 4, 1951, resolved that the clerk 46 be authorized to apply to the county treasurer of Missoula County for the issuance to Missoula County of tax deeds covering the described land in the notices.

44. W, 419, 23 Aug. 51.
45. Idem.
46. W, 486, 4 Dec. 51.
Land which the county appropriates by a tax deed cannot be redeemed subsequent to the issuance of the deed to the county. "If the county has acquired a proper tax deed by complying with the legal requirements for obtaining the said deed then all rights of redemption have been terminated."\(^{47}\) However, Montana Law\(^{48}\) provides that prior to the giving of the notice and the application for the deed by the county, a redemption of the property may be made by the owner or by any party having an interest in or lien upon the property.\(^{49}\)

The Missoula County board does not acquire tax deeds on tax delinquent property simply for the purpose of acquiring the land, but to restore it to the assessment rolls by resale. It is not uncommon for the board to have inquiries regarding the buying of tax property, and if possible the board advises the individual of the prospects of a sale.\(^{50}\)

The board sells county property by a legally prescribed procedure. A resolution is passed declaring that

\(^{47}\) County Att'y. Op. to Comm'rs, 24 May 1952.

\(^{48}\) Mont. Rev. Code 1947, § 84-4132: One-third to one-half of the land is often redeemed.

\(^{49}\) Beckman Bros. Inc. v. Leir, 120 Mont. 305, 184 P. 2d 347 (1947) at 348: "Where right of redemption is not exercised before issuance of tax deed the right of redemption is lost."

\(^{50}\) W, 389, 20 July 51: "The commissioners advised an 'inquirer' regarding buying tax property. He was advised that there isn't any at this time and probably won't be until fall."
the county has acquired certain tracts of land by tax deed, the property of which has been duly appraised, and that it "would be advantageous and for the best interests of Missoula County to have a sale of said property" again placing the land on the assessment rolls. The clerk is directed to publish and post notices of this order of sale. The notice of sale posted pursuant to a resolution of March 20, 1952 stipulated that the sale would be for cash and no bid would be accepted for less than the appraised value. A notice of the board on May 4, 1950 had a more particular qualification attached to the sale. "The terms of the sale are cash and the buyer must agree to connect to the sewer before any building is occupied." In all the notices the date for the sale is set, and after the sale, the board instructs the clerk to issue quit claim deeds to the several purchasers of land.

51. The county assessor makes a list each year of the taxable value of the property in the county. The assessment occurs between March 1 and July 15. The law provides that the commissioners shall act as a board of review to hear the claims of persons who feel that their assessments are too high. (Mont. Rev. Code 1947, § 16-1016).

52. W, 566, 20 Mar. 52.

53. W, 72, 24 May 50.

54. County Att'y. Op. to Comm'rs, W, 515 12 Jan. 52: "The county cannot sell land which has been dedicated for a specific purpose. It cannot divest itself of the trust by reconveyance."
The evidence in the commissioners' journal shows that the Missoula County board purchases and sells county property for the county in a lawful and businesslike manner. Of course, the commissioners have discretionary powers, and they have the right, when they purchase property, to accept the offer which in their opinion is of the best responsible bidder. The sale of the county's real or personal property is done, it appears, in a manner without reproach.

4. Building and Repairs

A construction project.

"The . . . commissioners [have] . . . power . . . to cause to be erected . . . a courthouse, jail, hospital and such other public buildings as may be necessary." (Mont. Rev. Code 1947, § 16-1008)

Building projects are as much the commissioners' responsibility as the maintenance of the buildings the county already possesses. Construction during the period examined cannot represent all that the commissioners have done, but several episodes suggest the procedure likely to

55. Brief for the plaintiff 3, State ex rel. Taylor v. the Board of County Commissioners, no. 19187, D. C., 4th, Mont., October 15, 1952: "The board of county commissioners is given the jurisdiction and power to erect and furnish a courthouse." W, 13, 10 Feb. 50: The board accepted the work of a general paint contractor for cleaning and painting the courthouse walls. The board on February 8, 1951 passed the following resolution: "Whereas due to the condition of various parts of the courthouse building caused by meetings held within the building . . . now therefore be it resolved that before any meetings be held within the county courthouse, approval must be granted by the Board of County Commissioners." W, 277, 9 Feb. 52.
be followed in county construction.

In 1941 fire destroyed the grandstand at the county fair grounds. From that time the county used a section of the old bleachers as seating facilities for the grounds, until 1950, when the commissioners and county engineer declared the bleachers unsafe for future use.

Following their policy to enlist the support of city and county organizations in projects of general community benefit, the board accepted an offer by the Junior Chamber of Commerce to tear down the condemned bleachers. The arrangement started a relation which extended to the termination of the project.

When the commissioners opened bidding on July 27, 1950 to build new bleachers, the Junior Chamber of Commerce entered a bid on August 12, 1950 to build the stands. Evidence does not indicate that other bids were submitted for this project. The board took the civic organization's bid under advisement, and accepted it within a week. One reason for the decision undoubtedly was the offer by the civic organization to donate all the lumber contained in a portable bleacher on the north side of the fair grounds. This would furnish much of the lumber necessary to build the

57. W, 162, 12 Aug. 50.
58. W, 170, 16 Aug. 50.
new stands, conveniently cut to size and near the location of the building. In any event the interest shown by the Junior Chamber of Commerce, and the spirit of cooperation existing between them and the commissioners, represented a saving for the county and a project expediently and thriftily completed.59

Ditches, Drains and Streams.

"Concerning liability for failure to control the stream resulting in damage to private property, the answer is no liability."

(County Att'y. Op. to Comm'rs, 16 April 49)

The extensive farm and irrigation areas of the county have made it necessary for the commissioners constantly to guard county property in areas where irrigation water or unattended ditches may cause damage. The board also has the responsibility of surveying the creeks of the county during high water seasons to see that the county roads are not undermined and washed out.

Two county attorney's opinions have substantially defined their power in these activities. These two opinions state that the "county has authority to construct drains and ditches for the preservation of county roads,"60

59. The county attorney advised the commissioners not to enter into a similar agreement with the Missoula Livestock Commission. The commission had offered to give to the county a gravel pit in exchange for the oiling, grading and making of a new road in the vicinity. 2, 307, 2 April 50.

60. County Att'y. Op. to Comm'rs, 6 May 52.
"the power to construct and maintain bridges," and incidental thereto, "controlling the flow of the water to prevent damage being incurred by the bridge." 61

In early spring of 1950 the commissioners were directing the work of a siphon or water underpass on a ditch in the Orchard Homes area. The siphon was to bypass the water under West Seventh Street in the Dinsmore Orchard Homes district. Several letters, one from the president of the Orchard Homes Irrigation District, protested this activity but the work continued until the district court awarded a temporary injunction. But the commissioners' formal answer at the hearing on May 18, 1950 was deemed sufficient, and the injunction was dismissed. 62

While the county has no duty to control the streams in the vicinity, and is not liable for stream damage to private property, the United States Government, nevertheless, has made funds available to the county for flood control of the Clark Fork River. The allocation of federal funds stipulated that the local agencies would have to assure certain rights of way and easement to the Corps of Engineers for levees on the river. The commissioners accepted the conditions and the funds, on May 9, 1949, 63 and the Army com-

61. County Att'y. Op. to Comm'rs, 16 April 49.
pleted the flood control measure in June 1951, informing the board that "the completed levee now becomes the responsibility of Missoula County to operate and maintain."64

None the less, a resident of the Orchard Homes subsequently asked in November, 1951 "how the county could go about it to have the Army Engineers finish the job on the Clark's Fork River . . . "65 No further mention is made of this matter in the journal.

5. A Problem in Federal Regulation

In the early part of 1951 the commissioners anticipated the season of county fairs, auto races and rodeos. A survey of the fair ground facilities revealed a dangerous shortage of rest room services and the commissioners prudently agreed that new rest rooms would be in order.66 This decision probably would have been endorsed by Missoula County residents, one and all. But the county could not build rest rooms at the fair grounds until the Bureau of Foreign and Domestic Commerce approved allocation of steel for the project. This approval eventually was given, in time to accept a bid for construction, on June 29, 1951.67

64. W, 391, 23 June 51.
65. W, 474, 19 Nov. 51.
67. W, 368, 29 June 51.
The building, nevertheless, could not commence without approval by the National Production Authority's office in Butte. This approval eventually came on July 17, 1951, when the season was already well advanced. On that date, the board filed a letter from the National Production Authority, giving authority to commence construction of the public latrine.

69. W, 388, 17 July 51.
CHAPTER III

THE MANAGEMENT OF INSTITUTIONS

1. The Missoula Airport Board

"Counties . . . may . . . acquire . . . land for airport . . . and thereon establish, construct, own, control . . . operate and regulate airports . . . " (Mont. Rev. Code 1947, § 1-801)

"The county . . . may create a board . . . and may confer upon them the jurisdiction for the . . . maintenance and operation of such airport . . . " (Mont. Rev. Code, 1947, § 1-803)

A few miles west of the city of Missoula on Highway 10 Missoula County maintains the Missoula County Airport. The operation, maintenance and control of this airport \(^1\) is primarily in the jurisdiction of Missoula County, and the county has vested management in the Missoula County Airport Board, composed of five members appointed by the commissioners for a term of three years. The Airport Board's meetings are not normally noted in the commissioners' journal, but it meets in joint session with the commissioners at least twice a year to discuss work done during the past

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1. Zoning and air traffic over Hale Field is regulated by the airport board. Hale Field is the flying field directly South of Missoula at which the Johnson Flying Service maintains its hangars and offices.
year, and to plan future projects. The practice of the commissioners is to reappoint members to the board presumably as long as they are willing to serve.

The county maintains an airport board fund, budgeted each year for the expense of the field. This fund seems to have been sufficient for normal maintenance and operation. But in recent years Missoula County has been interested in an airport development project for which it has been necessary to seek federal aid.

Prior to receipt of federal aid, the commissioners were using a large surplus in the Airport Board's budget for the development program. In 1949, since the board had spent approximately $10,000 of this surplus for airport development, the commissioners found it necessary to ask the opinion of the county attorney whether such expenditures were in any way restricted by the $10,000 liability limit. The county attorney advised that expenditure of a surplus fund does not create a liability, and that "the airport fund may be used for the construction of an airport administration building."

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2. The financial management of loans and budgets remains in the commissioners' hands.

3. Mont. Const., Art. XIII, sec. 5: "No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000) without the approval of a majority of the electors . . ."

Since the Civil Aeronautics Administration was also interested in the development of the airport, the county applied to the Federal Government and received financial aid for the development of the Missoula County Airport. Federal aid was sought by the county in the form of a grant agreement. In June, 1950, the commissioners executed a project application requesting federal aid for the development of Missoula County Airport. A grant agreement was offered on August 7, 1950 whereby the Federal Civil Aeronautics Administrator for and on behalf of the Federal Government agreed to pay twenty-five percent of the allowable land acquisition costs and fifty-three percent of other allowable project costs. The commissioners accepted the offer on the same date and agreed to all the terms and conditions of the grant.5

Smoke jumping and fire fighting activities make Missoula County the center of much aerial activity.6 To aid these activities the Missoula County Board in February, 1952 made a cooperative agreement with the United States Regional Forester,7 whereby the county granted to the forest


6. Missoula is headquarters for the United States Forest District No. 1.

service without cost an easement on the landing strips and navigation facilities of the Missoula County Airport. In addition the Forest Service has secured airport land by condemnation for construction of smoke jumping and fire fighting facilities. Early in the spring of 1952 the Civil Aeronautics Administrator asked the commissioners to establish a fair market price for the 71.07 acres of land involved. The board responded that since land values had increased seventy percent, and the county had paid $20 per acre for the land, a price of $34 per acre was a fair market price for such land. Subsequently, the property was condemned by the United States Government and sold to the Federal Government at the declared market price.

2. Fort Missoula

"A county has the power to enter into a lease and to become a tenant of real estate when the use thereof is needed to carry out any of its acknowledged powers and purposes." (20 C. J. S. 1002)

During the last four years, Missoula County has leased from the Federal Government a surplus property known as Fort Missoula. The Fort, just south of Missoula, is an expanse of 823 acres of land, with many barracks, buildings and a number of houses. The commissioners and residents of the county apparently have found that some of the business

8. W, 537, 3 April 52: "Lands in Missoula County airport . . . are being condemned by the Federal Government for the development of fire fighting facilities."
and domestic demands of the area are most conveniently satisfied if the county is in a position to lease the buildings and lands of the fort to private parties and business interests. The commissioners, therefore, have retained a lease on the Fort Missoula property, and have kept the option to the land. The board in turn sub-leases or rents the land, barracks, buildings and houses to business companies, recreation clubs and residents of the county. The buildings are leased for storage, shows, exhibitions and for residence purposes. Evidence indicates that the commissioners have attended carefully to the leases, renewing them and serving notices of cancellation when the leases have expired. The board also has rented the fort buildings, and given notice to vacate when the term of rent was finished. Thus, on June 1, 1950, the board instructed the clerk to send a notice of cancellation by registered mail to E. E. Rutgers with the following information inserted: "You are hereby notified that the certain lease made and executed to you by the county of Missoula is hereby cancelled and all obligations thereunder are terminated." In another instance the board renewed a lease to barracks G in the case of L. E. Noel for the period beginning July 1, 1950 and ending June 30, 1951. Such agreement would, of course, forestall any notice

9. W, 83, 1 June 50: The "lease covers certain lands held by said Missoula County under lease from the United States of America . . . "

of cancellation, as above, to be sent by the board. Early in February, 1950 a notice to vacate was issued to a tenant renting certain county property, informing the individual that he would be obliged to pay the rent of the premises, or to deliver up possession of the property within three days after the service upon him. He was further instructed in this notice that legal proceedings would treble the rent as provided by the code of civil procedure. In another action the board granted permission to the 4-H club and the Missoula Hereford Association to use Bldg. #104 at Fort Missoula for a few days.

In conducting the business of the fort the Missoula County Commissioners are advised by the Fort Missoula Advisory Board. Members of the Advisory Board are appointed by the commissioners and serve as counsel to the commissioners on any matter called to their attention concerning the fort. In June, 1950, a permanent advisory board was proposed, the members of the board to include "representatives from all concerned civic groups."

Although lease of the fort involves substantial outlay by the county, the receipts in the form of rents and leases exceeds the cost of maintaining the property. In the fiscal year of July, 1951 to June, 1952 the expense to

11. W, 18, 7 Feb. 50.
the county was $18,258, but the receipts from the property were $19,915. In view of these facts it is evident why the advisory board has recommended to the commissioners that the county keep its present option on the property. The county possesses a five year lease to the property with payments regularly due on the lease to continue the five year option, and the county still (1952) holds the lease to the area.

In March, 1950, however, the board found it necessary to hold a public hearing concerning an emergency expenditure necessary to pay for the utility services furnished the county by the Department of the Army. At the hearing a group of Missoula residents "objected to the entire Fort Missoula proposition." But the board resolved that an emergency expenditure was necessary, to be paid by the issuance of emergency warrants.

Many residents of Missoula County consider the fort to be such valuable and useful property to the county that the county should acquire the land. The commissioners became fully aware of this on September 22, 1950, when a thousand registered voters of the county petitioned the board to call an election upon the question of issuing

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16. U, 195, 22 Sept. 50; the total number of registered taxpayers whose names appeared on the last completed assessment roll at this time was 8,975. This petition contained 1305 names. The number required was 1795.
county bonds for the purchase of the Fort Missoula property. The bond issue was to be for $150,000. The petition was denied because less than the required twenty percent of the registered electorate had signed the request.  

The profit which the county gains from Fort Missoula is not a large one, but it is a profit. Nevertheless, the evidence indicates that the board has acted with competence in the handling of this property. The board has attended to the rents and leases, cancelled them when necessary, and renewed them at every opportunity. This practice of the board enabled the county to show a profit of about $1,500 for the fiscal year of 1950-51, and $1,600 for the fiscal year of 1951-52.

3. The Missoula County Schools

"The term 'school district' . . . is declared to mean the territory under the jurisdiction of a single board, designated as 'board of trustees' . . . organized in the form and manner as . . . provided . . . " (Mont. Rev. Code 1947, § 75-1801)

"A new school district may be created out of a portion of one or more existing school districts where the taxable valuation . . . in each district . . . is not reduced below $75,000 and where the number of census children between the ages of (6) and (16) years is not reduced below (15)." (Mont. Rev. Code 1947, § 75-1805)

The Missoula County school system consists of fifteen regular school districts with each district under the general supervision of a board of trustees. The trustees of the districts are elected by the voters of their district for terms of three years. At least one new trustee is elected in April of each year in each school district. The Missoula Board of Commissioners, however, has some direct and indirect authority over the school system. The commissioners, with the county superintendent of schools, are by law the board of school budget supervisors. The commissioners meet with the supervisor each summer before the school season starts and, with the county superintendent, prepare the budget for the expenses of the county education program during the coming year. This budget, which deals with wages and salaries, maintenance and operation costs, is a part of the county budget. The commissioners must also ratify emergency budgets requested by the board of trustees of any school district of the county. Due to the increase of expense, and the enlarged enrollment of the elementary schools, the board generally complies with the trustees' request. Such was the case on February 27, 1951 when the board approved the emergency budgets for school districts 11, 33, and 34.

18. Missoula County maintains, beside the regular school districts, four joint school districts with the surrounding counties. These are the Alberton, Florence Carlton, Arlee and Woodworth school districts.


20. n., 252, 27 Feb. 51.
These were the Potomac, Smith Flat and Seeley Lake school districts, respectively.

The authority of the commissioners over the school system includes hearing of appeal by parties who are dissatisfied with an action of the county superintendent granting a petition to create a new district or to change the boundaries of an existing one. The commissioners received such an appeal from resident taxpayers of School District No. 40, protesting the transfer of a portion of District No. 40 to Joint School District No. 2. The board agreed to hear the appeal of the taxpayers from the two districts, and designated April 5, 1950 as the date of the appeal. A large delegation appeared at the hearing and attorneys represented both sides. The attorney for District No. 40, the Frenchtown District, asked that the petition transferring the property be denied. Since the Alberton District is a joint district with Mineral County, it is not surprising the board resolved to deny the transfer.

The problem of building finance for the Missoula County schools also confronts the commissioners. The board has the power to issue bonds for the purpose of constructing and repairing high school buildings and dormitories, and

22. W, 52, 5 April 50.
23. W, 52, 5 April 50.
for the purchase of a suitable site for such buildings. Further, upon a proper petition from twenty percent of the registered voters whose names were on the last completed county assessment roll the commissioners must submit the question of issuing county bonds for school purposes to a special election. In March, 1952 the Missoula County board, after proper petition, resolved to hold an election on the issue of $3,000,000 in bonds, to build a new county high school building. Commissioner Duncan opposed the resolution for an election on the ground that the amount of the proposed bond issue would prevent other needed county building programs. His view seems to have been sustained by the voters, who failed to cast a favorable majority vote.

The high school district.

"Every county high school shall be under the general supervision and control of a board of trustees . . . [and] shall be appointed by the board of county commissioners . . . " (Mont. Rev. Code 1947, § 75-4103)

"... a commission consisting of the county commissioners and the county superintendent of schools and shall . . . divide the county into high school districts . . . after hearing." (Mont. Rev. Code 1947, § 75-4602, as amended, Laws 1951, C. 188, sec. 2)


25. W, 577, 29 Mar. 52: A resolution was made to submit to qualified electors a bond sale, bonds at 20 years or less and not to exceed six percent per annum.

26. W, 618, 9 May 52. Out of the 11,061 registered voters in Missoula County, 2,317 voted for the bond sale, and 2,968 voted against the proposal.
The Missoula County Free High School is a county consolidated school for the entire area. The county, in addition, maintains another high school at Frenchtown under the control of the board of trustees of School District No. 40.\(^27\)

The Missoula High School Board appointed by the Missoula County commissioners has general administrative control over the activities of the Missoula County High School. The practice of the commissioners is to re-appoint the board members, serving staggered two year terms. In January, 1950 the board of trustees of School District No. 40, the Frenchtown District, asked the commissioners to divide Missoula County into high school districts.\(^28\) The commissioners could do this after a proper public hearing. But at the hearing, delegations from a number of school districts appeared in protest.\(^29\) Although the board might ordinarily divide the county into high school districts after the one hearing, in

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\(^27\) Mont. Rev. Code 1947, § 75-4139: "When the board of trustees of any school district desires to establish a high school, it shall petition the superintendent of public instruction . . . when the establishment of a high school has been approved in accordance with the provisions of this section . . . the superintendent shall then assist the board of trustees of the school to establish such high school . . . ."

\(^28\) Jan. 7, 20 Jan. 50. This appeal was entered before the abortive \$3,000,000 bond issue for school construction.

\(^29\) At the first hearing, petitions of protest were presented to the board by the attorney who represented School Districts No. 3 and No. 20. A petition by the freeholders of Joint District No. 8 was read. The board adjourned to reconvene on February 29, 1950. Jan. 20, 15 Feb. 50.
this instance the board held two other public hearings in February and April, 1950 to decide the matter. The second hearing in late February brought a delegation from School District No. 40 which urged the creation of School District No. 40 as a high school building district. After considerable discussion, it was decided to adjourn and at a third hearing the board met with delegates from Missoula County High School, Grass Valley, De Smet, Arlee and Alberton School Districts. When the commissioners and the county superintendent reconvened, the chairman of the board moved that School District No. 40 be left as one district with Missoula County High School. Attorneys representing the other districts declared the motion was improper and illegal. At this point the members of the board seem to have become divided in their opinion. The county superintendent then moved that School District No. 40 be created as a high school building district with the balance of the county being left in another high school

30. W, 24, 28 Feb. 50.

31. W, 52, 5 April 50.

32. This was objected to by attorneys representing School Districts No. 3 and 20. There is no record of what the illegality involved.

33. While the board favored a division of the county into high school districts, they could not decide on the number of districts to be created, and they could not agree whether to combine the Frenchtown High School with the Missoula County Free High School. Thus the motion failed of adoption.
district; this also failed, by a tie vote. The vigor of the protest and inability to obtain agreement led the board to drop the whole issue.
CHAPTER IV

THE CLASSIFICATION OF THE COUNTY

"The . . . county commissioners must, at their regular session in September, 1942, and each four years thereafter, make an order designating the class to which such county belongs." (Mont. Rev. Code 1947, § 16-2420)

". . . the several counties . . . shall be classified according to . . . valuation of the property . . . " (Mont. Rev. Code 1947, § 16-2419)

The regular and special sessions of the board.—

County Commissioners of first, second, third and fourth class Montana counties may, by law, hold regular meetings everyday throughout the year.¹ Commissioners in counties of the fifth, sixth and seventh class are limited to the regular monthly session of three days and to necessary special sessions.² The board in regular or special

1. Mont. Rev. Code 1947, § 16-910: "The board of county commissioners . . . may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days . . . the board may . . . hold an extra session of not over two days' duration; . . . the limitation as to the time of session shall not apply to counties of the first, second, third or fourth classes." The pay remains the same for county commissioners in all classes of the Montana Counties. (See Mont. Rev. Code 1947, § 16-912 as amended by S. L. 1949).

2. Counties which have a taxable valuation over $20,000,000, $30,000,000 and $50,000,000 are third, second and first class counties in that order. Counties which have a taxable valuation over $10,000,000, $5,000,000, and under $5,000,000 are fifth, sixth and seventh class counties in that order.
session always acts as a unit and "a majority of its members control its action." The commissioners cannot act except as a board and it is only in this capacity that they represent the county.

While the regular sessions of the board in less populous counties must not exceed three days, the board may hold a special session for not longer than two days after posting public notice two days in advance. Although the statute is specific as to the time and duration of regular or special meetings of the board, "the board may nevertheless hold meetings at any time the business of the county requires them to do so." But these special meetings are to be held only when conditions requiring board attention have come to their knowledge and have rendered necessary the special session.

Each commissioner is paid $12 per day for each day of attendance at the sessions of the board, and each commissioner is paid seven cents per mile for the round trip from his residence to the county seat.

5. Idem.
   State ex rel. Payne v. District Court, 53 Mont. 351, 165 Pac. 294 (1917) at 295: "A county commissioner can lawfully collect for services performed in virtue
The auditor.--In 1950 the county commissioners were aware that at their first regular session in September they must designate the classification of Missoula County. Early in 1950, it was likewise apparent to the county commissioners that Missoula County had gained substantially in the last few years both in population and in the taxable valuation of the property. Although the county assessor had not yet submitted to the board his assessment roll for the fiscal year 1950, the commissioners estimated that the taxable valuation might well be within the $15,000,000 to $20,000,000 bracket which would make Missoula County a fourth class county. The board was also aware that the reclassification of Missoula County from a fifth class to fourth class county would normally mean election of an additional county office, that of an auditor. A county auditor, by law, must exist in all first, second, third and fourth class counties but in no others.

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8. 23 Op. Atty. Gen. 257: "State ex rel. Jaumotte v. Zimmerman (1937) 105 Mont. 464, dealt with the problem of the county board's duty in regard to reclassification. The court held that the statute requiring the various boards of county commissioners to make an order designating the class to which the counties belong was directory rather than mandatory, and further held that the reclassification statute operates automatically. The court concluded that the order of the board merely gave formal expression to a statute."

9. Mont. Rev. Code 1947, § 16-3201: "The office of county auditor is hereby created and the same shall exist in all counties of the state of Montana of the first, second, third and fourth class. Provided,
The county commissioners were interested in the nature and capacities of this new office. Realizing that an auditor must accompany fourth class status for Missoula County, the board concluded that the new county office should be consolidated with that of the clerk-recorder, a county office with which the commissioners maintained close contact. The board would then be able to exercise supervisory powers, giving to the new office the benefit of its scrutiny, advice and direction.

Such consolidation of offices appeared to the commissioners to be desirable. Article XVI, section 5 of the Montana Constitution provides that each county of Montana shall elect each of the following county officers: county clerk, sheriff, treasurer, county superintendent of schools, surveyor, assessor, coroner, and a public administrator; however, that in counties of the fifth class where a county auditor has been elected he shall hold office until the expiration of his term, but no longer."

10. Mont. Rev. Code 1947, § 16-3207: "The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in his office." A letter to the board of commissioners from auditor, August 8, 1952: "The responsibility to prevent ... error and fraud in Missoula County lies in the office of the county auditor ... the auditor is ... charged by law to investigate, examine, inspect, and endorse his approval or disapproval on every claim, that may be purchased by any county officer or the county commissioners, before payment can be made." See also Mont. Rev. Code 1947, § 16-3203.

11. The clerk and recorder is the clerk of the board and ex-officio recorder.
and the commissioners may, in their discretion, consolidate any two or more of the above named offices. The office of auditor is conspicuously absent from this list of offices included in the constitution. In spite of this fact the commissioners felt that it was within their power to consolidate the office of auditor with the office of clerk and recorder. The board passed a motion that on April 4, 1950 a public hearing would be held concerning the consolidation of the two county offices, and any taxpayer of the county in support or in opposition to the consolidation would be heard. The minutes of the journal also state that "after the hearing the board may pass a resolution consolidating the two offices."

The commissioners were apparently determined at this time to pass such a resolution, but not until after a public hearing. They had also requested the county attorney to submit an opinion on the question of consolidation. Ten

12. Mont. Rev. Code 1947, § 16-2504: "Nothing herein contained shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices named in the aforesaid article of the constitution."


14. The commissioners could consolidate the offices mentioned in the article of the constitution without holding a public hearing. See Mont. Rev. Code 1947, § 16-2504 above, in footnote seven.

15. The journal records that the board received the opinion of the county attorney April 27, 1950, after the hearing. It had requested the opinion on March 23, 1950. W, 58, 27 April 50.
days after the notice was publicized in "a leading county newspaper," the public hearing was held. It was apparent from the number of Missoula citizens who appeared that the county was not endeavoring to make a public spectacle of the hearing, for only four Missoula County residents were present. The discussion immediately launched into the legality of the proposed consolidation. The wisdom of consolidating the office of auditor with any other county office, if it were allowable, seems never to have received consideration, and this problem was forgotten in the confusion over the legal issue involved.

The effect of the public hearing, regardless of the board's assertion that the commissioners might pass an order consolidating the two offices, was to delay such resolution. The journal records that after the discussion "the matter was taken under advisement by the county commissioners." 16

Events to this time indicate that the board was certain the offices could be consolidated, but it is equally true that they had not attempted to consolidate the offices without the formality of public approval and a legal opinion. 17 It is evident the board was concerned about the fact the constitution made no provision for the consolidation.

16. W, 46, 4 April 50; in practice the board will take under advisement various matters if a satisfactory agreement is not reached on the day of the consideration.

17. The hearing was held upon a motion of the board and not upon a petition of the qualified electors of the county.
But evidently the commissioners thought a public approval could sustain the board in their proposal to combine the two offices. The board had sought the advice of the county attorney, but since the request was late, it probably would not be rendered by the time of the public hearing.18

Late in April, 1950, the county attorney submitted his written opinion on the subject of consolidation. The opinion stated:

It is the ruling of the attorney general that the office of the county auditor is not a constitutional office, but rather was created by an act of the legislature of 1891 and that as sec. 16-2501 provides for the consolidation of offices enumerated in sec. 5, Art. XVI of the constitution . . . the law makers have definitely excluded the office of county auditor from the list of offices that may be consolidated. It is his further opinion that "the law does not provide for and I know of no procedure to be followed in consolidating a two year office with a four year office. Any decision to set the term of such consolidated office, whether it be for a two year term or a four year term would be arbitrary and without support in law."20

18. An opinion to the board by the county attorney may be oral or written. In the years here surveyed opinions have usually been written.

19. 23 Op. Atty. Gen. to R. F. Swanberg, County Attorney, Missoula County, 256, 259, March 6, 1950: "It is the term of office of county auditor four years as provided by sec. 4825, Rev. Code Mont., 1935 or is said term limited to two years as provided by Art. XVI, sec. 6 of the Montana Constitution? . . . . With reference to your question regarding the term of office of county auditor, it needs no citation of authority to state that where a conflict arises between a statute and the constitution, the latter being supreme law of the state must necessarily govern."

The opinions of the county attorney and the attorney general were unfavorable to the position the county commissioners had attempted to defend. However bitter the defeat to the commissioners, no further record of the matter arises until September 5, 1950 when the board in regular session passed a resolution declaring, "now, therefore, be it hereby resolved that Missoula County, Montana, is hereby designated as a county of the fourth class and be it further resolved that the government of the county shall change in conformity herewith on the first Monday in January, 1951." Missoula County in January, 1951 would be a fourth class county and whatever may have been in store for the county commissioners with the new classification and new auditor, the future was redeemed by the fact that, as County Attorney Castles explained to a highly concerned Missoula County resident, "since 1 Jan. 1951 Missoula County is a fourth class county and the commissioners were authorized to meet each and every day at their discretion."  


22. W, 384, 11 July 51 as noted in the journal. The change of Missoula County from a fifth to a fourth class county had no material effect on the number of meetings of the board. In January, February and March, 1950, the board of the fifth class county of Missoula met in regular and special sessions 25, 22, and 27 days respectively. The board of the fourth class county of Missoula in January, February and March of 1951, by coincidence, met 25, 22, and 27 days respectively. As noted above, the board of a fifth class county can meet only three days of each month in regular session, with the exception of December, and additional meetings in the month must be special sessions.
One of the chief criticisms of Montana county government is that there are too many independent, elective, administrative offices.\textsuperscript{23} The writer noticed that most of the county officers of Missoula County, with the possible exception of the surveyor and the clerk and recorder, were free of any effective supervision by the county commissioners.\textsuperscript{24} But the commissioners can exercise their supervisory power, which may, as in the example of the auditor, be more ineffective than no supervision of any kind. The writer believes that the continuing conflict (December, 1952) between the county auditor of Missoula County and the county commissioners serves to demonstrate how grave is the lack of and how great is the need for an effective coordinating head of Montana county government.\textsuperscript{25}

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\textsuperscript{23} Renne, \textit{op. cit.}, 82: "The system has no effective coordinating head. Each elected officer is largely his own manager and is interested mainly in building up his department rather than in building up the efficiency of the whole county service."
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\textsuperscript{24} The journal contains very little evidence of the commissioners' supervision of the majority of the elective county officers. The journal, however, contains lengthy sections on the office of auditor, which, of course, is not free of the commissioners' active control.
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\textsuperscript{25} See below, chapter seven.
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CHAPTER V

CONTROL OF SPECIAL DISTRICTS

1. Plats and Additions

"When the land platted is outside of the boundaries of a city or town, such plat must be prepared in duplicate and submitted to the board of county commissioners of the county for its examination and approval . . . ."

(Mont. Rev. Code 1947, § 11-608)

"For the purpose of promoting the public . . . welfare and safety such plat and survey must show that at least one-ninth of the platted area . . . is forever dedicated to the public for parks and playgrounds; . . . provided, that where such platted area consists of a tract of land containing less than twenty acres, such board of county commissioners . . . may make an order in the proceedings of such body, to be endorsed and certified on said plat, that no park or playground be set aside or dedicated." (Mont. Rev. Code 1947, § 11-602)

Contractors, builders, and corporations who wish to develop residential areas outside of the city limits of Missoula must submit to the county board a survey and plat in duplicate of the proposed addition. The usual practice is to have a lawyer representing the building corporation present the plat to the board; in other instances, the county surveyor may submit the plat to the commissioners.

1. W, 100, 23 June 50.
Since most of the residential additions recently developed in the county have been under twenty acres, the board, pursuant to law, has in many instances either on request³ or by its own resolution⁴ stipulated that the new areas are not to have parks or playgrounds. The commissioners waive the park requirement, however, only when it is clearly indicated by the plat that the new district does not possess suitable park or playground space,⁵ or that the public interest does not recommend such a park.⁶ In either instance, the board is satisfied with the inspection of the survey and plat; there is no record of the commissioners actually viewing the area of the proposed addition.

While builders have successfully eliminated allocation of land for parks, residents of other additions have not been successful in solicitation of the board to obtain or improve a park. Although the people of the Elms Addi-

³. W, 456, 16 Oct. 51: "In the matter of the petition of Mosby's Incorporated . . . that the said corporation be relieved of the obligation to set aside any portion thereof for park or playground", it was ordered that the petition be granted.

⁴. W, 117, 5 July 50.

⁵. W, 214, 27 Oct. 50: "It appears to the board that no suitable place exists for a playground or park, it is hereby resolved that . . . no park or playground be set aside in subdivision." This resolution was made when the Pattie Canyon Addition was approved.

⁶. W, 456, 16 Oct. 51: " . . . it further appears that to set aside and dedicate any part thereof for a park or playground would not be in the public interest, and it is hereby so ordered."
tion volunteered at their own expense to supply tables, chairs and other equipment to furnish a park, the commissioners refused this generous offer, for the reason that no money was budgeted for parks during the current year.

Vacating plats.—A plat which has been filed in any county of Montana may be vacated by the owners of the plat upon a petition submitted to the county commissioners, if the county board approves the petition. Such petitions have been addressed to the Missoula County Board. Thus, Mosby’s Incorporated petitioned the board of commissioners on December 14, 1951 to vacate the plat of addition No. 1-A, Farviews Homesites. The petitioner asserted that no rights of any persons would be adversely affected by annulment of the plat, and the order vacating the plat soon followed.

7. W, 314, 12 April 51.

8. W, 322, 26 April 51: “Mrs. Paul Delaney from the Elms Addition was in the office in the morning regarding making a park in that location. We advised her there was nothing that could be done this year because there was no money budgeted for parks.”

9. Mont. Rev. Code 1947, § 11-2803 (1), as amended, Laws 1951, Ch. 70, sec. 1: “When there shall have been filed in the office of the county clerk of any county in this state a plat . . . and it is desired by the owners of said lands to vacate said plat, the county commissioners of the county . . . upon petition of the owners of all the lands described in the plat . . . shall cancel and annul said plat.”

10. W, 492, 14 Dec. 51: “Petitioner represents that no rights of any person would be adversely affected by the vacation and annulment of the plat described.”
The law requires petitioners to certify that no rights of any person will be jeopardized by granting the request, and all owners of land in the plat must sign the petition. The Missoula County commissioners appeared to be satisfied, without further investigation, with the assertion in this Mosby application that no rights of any person would be adversely affected. Cancellation and annulment of the Ferviews plat was forthcoming.

2. Special Purpose Districts

The special purpose district has been most common in southern and western United States. It is a comparatively new agency of local government, but it has assumed functions of local administration which are both broad and varied. Special districts are created to handle problems of roads, health, fire prevention, rural improvement, and a wide range of other matters.

Special districts have been classified as quasi-municipal corporations, a political subdivision of the state "created not for a purpose of government, but for a special purpose."  

11. Mont. Rev. Code 1947, § 11-2303 (2), as amended, Laws 1951, Ch. 70, sec. 1: "Petitions under the terms of this act shall be signed by all the owners of the land in such platted area, and shall distinctly refer that no rights of any person... would be adversely affected by the cancellation and annulment thereof."

12. #, 232, 30 Nov. 50: The board received a petition from the Battlesnake Community Club to form a fire district for that area. The journal recorded no further development during the period surveyed.

The initial step in creating a special district is to petition the specified authority; the petition in most cases must be signed by a majority of the landowners, or by a majority of the voters in the district to be created. Petitions for special districts are usually presented to the county board. The commissioners pass on the legal sufficiency of the petition and order an election to have the voters determine the formation of the district.\(^\text{14}\)

**Rural improvement districts.**

"Whenever the public interest or convenience may require, and upon the petition of sixty percentum, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts . . . " (Mont. Rev. Code 1947, § 16-1601)

After the Missoula County Commissioners have received a proper petition for a rural improvement district, the board, according to the law, passes a resolution to create the district, designating its number, boundaries and general characteristics. The resolution is published,\(^\text{15}\) posted in three public places and mailed to persons and corporations owning property in the district. The board, also, sets a date for protest to the district within fifteen days after

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14. *Ibid.*, 484: In Montana, except for irrigation districts, special districts are usually formed by the county board. The district court forms the irrigation district.

15. The *Daily Missoulian* was the paper most used by the commissioners for the official publications of the county during the period here studied.
the first publication.\textsuperscript{16}

Since the board has observed the law regarding publication of the proposal for formation of the district, it has been advised to disregard protests which are not made within the allotted time. Unless the petition is filed within fifteen days of the first publication, and in writing, the board will not bother with later objections.\textsuperscript{17} But objection in proper order can wield large influence; although the board has final and conclusive decision on the matter, the Missoula County Commissioners have recognized protests, to resolve "due to objections received that the improvement district be denied at this time."\textsuperscript{18} On other occasions the "objections received being insufficient"\textsuperscript{19} the board has created a district.

The commissioners must by statute invite proposals from contractors for construction in the special district. The board publishes a notice to contractors at least twice in a daily newspaper that the county will receive bids

\textsuperscript{16} Mont. Rev. Code 1947, § 16-1604: "At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed . . . may make written protest against the proposed work . . ."

County Att'y. Op. to Comm'rs, 24 Mar. 52: "Where a statute clearly provides a method of procedure that procedure must be followed."

\textsuperscript{17} As noted in the County Att'y. Op. to Comm'rs, 24 Mar. 52.

\textsuperscript{18} W, 146, 2 Aug. 50.

\textsuperscript{19} Ibid.
fifteen days after the final publication of the advertisement. Contractors must submit their bid by a certain hour of the final day, for the board usually will not receive bids later than the designated time. The board does not have to accept any bid presented, but the commissioners generally will accept the lowest regular proposal.

The horse herd district.—A horse herd district is formed in much the same manner as an improvement district. The district must contain fifty-four square miles or more, and lie not less than three miles outside of an incorporated city. Fifty-five percent of the land owners in the district must submit the petition to the board, and the commissioners then publish the petition and set a date for hearing protests. The commissioners in the last two years have created one horse herd district. The board held a public hearing at 10:30 a.m., February 2, 1950 for hearing protests to the creation of the district. No protests were offered at the meeting, and since the signatures on the petition were verified by the commissioners, it was ordered that the land described in the petition be designated a

20. Mont. Rev. Code 1947, § 16-1607 (4): "The board of county commissioners may reject any and all proposals or bids should it deem this for the public good... and shall reject all proposals, other than the lowest regular proposal or bid of any responsible bidder..."

The Montana law on the platting of land, the dedication of parks in the platted area, the vacation of plats, and the formation of improvement districts is clear and explicit. It is probably as good as the laws of most states on these subjects. The writer is aware that contractors and builders could take advantage of these laws. A contractor can enter a plat under twenty acres purposely to avoid the dedication of a part of the platted area for a park. In the judgment of the writer the Missoula County Commissioners have not consciously allowed this to happen during the period studied. Further, it must be remembered that if an owner of land is injured by the vacation of a plat, and the vacation occurred without his knowledge, the party responsible for submitting the petition to the commissioners with the untrue assertion that all owners of the land have signed the petition is guilty of violating the law.

23. But see above, page 65.
CHAPTER VI

COMPLAINTS

A target of petitions is also a target of complaints. County roads and bridges are a leading subject of complaints to the board, especially since the county must maintain and repair all the bridges within cities. "The county maintains all of the bridges within the city. This is the only example where the county enters the city limits to oversee the maintenance of county property." Complaints about county roads are generally referred to the county surveyor. Often the commissioners will drive with the county surveyor to the location of the county property to inspect the trouble spot.

Complaints may be received in the form of petitions. Several years ago such a petition requested the board to inquire into "the sanitation of the property formerly occupied by Mrs. Cullop of 600 Ash Street." No further record is entered on this request, but it is presumed the commissioners and Mrs. Cullop solved the sanitation problem.

1. League of Women Voters, "What Form of Government Do You Have," (no date). The commissioners, however, maintain a county courthouse and jail within the city limits. Usually one or more of the commissioners is elected from within the city of Missoula.

2. W, 72, 24 May 50.
of Ash Street. Another day a worried Missoula resident complained someone was starting a wrecking yard near his home and wanted to know "how to stop it." The board "referred him to the county attorney."³
CHAPTER VII

JUDICIAL CONTROL AND THE COMMISSIONERS

1. Special Writs

"[The writ of mandamus] may be issued by . . . the district court, or any judge of the district court, to any . . . board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office . . . ." (Mont. Rev. Code 1947, § 93-9102)

With reclassification of Missoula County as a fourth class county, the office of county auditor was established, and its first incumbent was elected in November, 1950. The relationship between the new officer and the commissioners soon became the occasion of protracted legal controversy. Only that part of the developing controversy which is apparent from county commissioners' records is sketched here.

The auditor, as early as February 1, 1951, informed the commissioners by letter that the space and equipment of her new office was inadequate. She asked the commissioners to use their power and influence to help the auditor in establishment of an effective and useful office for the county. "I earnestly seek your thoughtful consideration and cooperation to raise the office of county
The evidence fails to reveal that effective action was taken by the county commissioners.

First Mandamus Writ

In the summer of 1951 the commissioners submitted their salary claims for the month of June. The auditor refused to honor them on the ground that "the information contained in the commissioners' journal was not sufficient to warrant her in allowing the same." The auditor was apparently within her rights to investigate the merits of all claims of public officials of the county whose compensation is upon a per diem basis.

In ensuing court action the facts were brought out that the auditor had approved the commissioners' claim except the per diem claimed for June 4, 5, 9, 21 and 23. On these days the auditor claimed that the commissioners were inspecting roads and bridges and that this was not a part

1. Letter from Mrs. L. Taylor, the auditor, to the board of commissioners, February 1, 1951.


4. The fourth district court awarded mandamus for the county commissioners against the county auditor to pay the commissioners the per diem claimed for June 4, 5, 9, 21 and 23, 1951.
of the commissioners' official duties. Also, the auditor claimed that in as much as the meetings were specially called by order of the board, the meetings were held without authority of law.

The court concluded that the Minute Book, containing the orders, decisions and daily proceedings of the board, showed that the commissioners had legally met on the disputed days, performing their duties as required by law. The court held that the commissioners were entitled to their writ requiring the auditor to approve their claims without exceptions.

Second Mandamus Writ

"We cannot compel the Board's discretion, but we can compel the exercise of it in a lawful manner." (State ex rel. Lien v. School District, 106 Mont. 223, 76 P. 2d 331 [1938] at 332.)

5. County Att'y. Op. to Comm'rs, 13 Feb. 51: "Sec. 32-303 takes the ministerial burden of looking after the highways, etc. off the commissioners, but in no way does it change the responsibility of the commissioners as to their duties as the board of supervisors and custodians of county property."

6. In the proceeding the auditor had applied for the appointment of an attorney to represent her officially in the law suit. The court in State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P. 2d 1060 [1937] at 1064 ordered that the auditor could have counsel. "Our own supreme court has held in several cases that a public official in actions in mandamus where necessary may be allowed attorney fees."


8. The commissioners were not to be paid per diem for days spent at the commissioners convention, attended on June 14, 15 and 16, but one-half per diem should be approved and allowed.
In August, 1952, after twenty months in office, and twelve months after her initial request for more adequate office facilities, the county auditor, Mrs. Laverne Taylor, still was operating from an office on the first floor of the Missoula courthouse building. This office was, and still is (December, 1952) shared with the county extension agent. The auditor's office is a small space, approximately 15' by 10' partitioned off from the agent's office. The office has no window space, is poorly lighted and not well ventilated. It was now her turn to ask court intervention, and on August 21, 1952 she petitioned in mandamus to compel action by the commissioners.

The subsequent court proceedings were entirely favorable to her, and the court ordered the commissioners to satisfy the essence of her demands. The board was given to October 15, 1952 to supply the auditor with space, equipment and personnel necessary for her to perform her duty, or to appear in court on the date and give reason for their

9. W, 245, 12 Dec. 50: A delegation appeared before the commissioners protesting the board's consideration of moving the county extension agent to the Welfare building. The matter was "taken under advisement." It appears the board considered placing the auditor in this office after the county agent had been moved. The county agent was not moved.

10. Brief for the plaintiff, 11, State ex rel. Taylor v. the Board of County Commissioners of Missoula County, no. 19187, D. C., 4th, Mont., October 15, 1952: "The office is approximately the size of the jury box in the court room of this court."
2. The Marco Flat Bridge Case
(A Mandate Order)

"All public bridges are maintained by the county at large under the management and control of the board of commissioners." (Mont. Rev. Code 1947, § 32-701)

Missoula County built the Marco Flat Bridge in 1910 or 1911 as a part of the county highway system into the Blackfoot country. A quarter century later, the state took over control of the highway, changed the river channel and made the road to pass under Blue Slide Mountain, thus detouring around the Marco Flat Bridge. But the structure was not removed; the old highway and the bridge remained in continuous use.

Small repairs were made on the bridge in the decade after 1936, but the bridge deteriorated into such a condition that in 1946 the commissioners gave notice of intention to abandon the bridge. There was such strenuous objection that the board dropped the proposal, but also failed to

11. Mrs. Taylor in an interview July, 1952 quoted the commissioners as saying, "we are the county commissioners and we will do what we want.'"

At the hearing on October 15 the judge deemed the commissioners' reason for their inaction to be insufficient. On December 29, 1952 the judge issued a peremptory writ commanding the commissioners to supply the auditor with adequate space and equipment for her office, and to provide the auditor the necessary additional help.
maintain the bridge, until its condition became obviously
dangerous. Finally a Missoula County resident, Henry E. Bertholf, who owned a home on the other side of the bridge, went to the district court and on June 5, 1952 got an alternate writ of mandate requiring the defendant, the board of commissioners, to restore the Marco Flat Bridge or to show cause in a written report why they had not done so.

3. The Maclay Bridge Affair

"Mr. Bulen pointed out that the bridge was part of the road system which had never been abandoned." (W, 617, 9 May, 52)

Maclay bridge crossed the Bitter Root River not far from its junction with the Clark Fork of the Columbia River. The spring flood of 1943 so damaged the bridge that it was necessary for the county commissioners to completely rebuild the structure. Reconstruction was started in the summer of 1943, but the "construction of the Maclay Bridge was perpetually enjoined by the District Court on the 14th

12. W, 347, 29 May 51: "Motion carried that the Marco Flat Bridge be closed as recommended by the County Engineer. Board notified Foreman Clinkingbeard to barricade and post said bridge."

W, 347, 31 May 51: "Mr. H. Bertholf from Clinton, who owns a home across the county bridge up the Blackfoot, was in the office complaining about this bridge being closed. The board advised Mr. Bertholf that the bridge was closed temporarily as a safety measure preliminary to an investigation."

13. On October 25, 1952, to comply with the District Court order, the board resolved that the county engineer repair the decking and railing on the Marco Flat Bridge. Also, it was ordered that a sign be posted on the bridge to read that only one vehicle be allowed on the bridge at a time and that the maximum load limit be 6000 lbs. gross weight.
day of Dec., 1948, in the case of Nash v. Parsons on the ground that the commissioners had not complied with legal technicalities in awarding the contract. For four years the work stood incomplete, and no crossing was available.

The great inconvenience to property owners west of the river was apparent. Early in 1952 the whole issue was again brought to the commissioners' attention. Despite the injunction demands continued that the bridge be completed. A careful inspection of the county's position in the matter brought out some interesting facts. It appeared that the county actually possessed a bridge fund surplus of $40,000. The new bridge would cost only $20,000. If


15. W, 534, 6 Feb. 52: "A group met with the commissioners regarding the construction of the bridge known as the Maclay Bridge which abutments were poured some two years ago and on which is a Restraining Order issued by the District Court to cease the construction of this bridge."

16. Article in The Daily Missoulian, June 1, 1952: "The judge estimated that the cost of carrying out the county's plan of moving a span from an unused bridge near Greenough in the Blackfoot valley 'would not exceed $20,000,' and that there is more than $40,000 in the county bridge fund."

17. W, 617, 9 May 52: "Mr. Rikel pointed out that monies now in the bridge fund were more than adequate to pay for the estimated cost of $20,000.00 in moving and erecting the bridge. He also pointed out unless the monies in the bridge fund were not used, the funds could not be carried over into the next fiscal year starting 1 July 52, and as a consequence may not be able thereafter to replace the Maclay Bridge without a bond election."
the commissioners were careful this time to avoid legal technicalities, it appeared the bridge could be built. This conclusion was confirmed by a court order, but not before the commissioners had conscientiously avoided all legal snags. In June, 1952, a judgment was entered, by the same court which issued the injunction, to immediately replace the Maclay Bridge.18

4. The Bourdeau Case

"You are instructed that it is one of the duties of the . . . commissioners to preserve, take care of, manage and control property owned by the county." (Instruction given by Judge Besancon at the trial of Bourdeau in the district court December, 1952)

On September 13, 1951, the Missoula county attorney charged Boyd Bourdeau, chairman of the Missoula county commissioners, with having received property stolen from the county. The crime was alleged to have taken place in August, 1950. The defendant was accused of knowing the

County att'y. Op. to Comm'rs, 7 June 52: "Vol. 19, Atty. Gen. Op. 19, 'the board . . . may purchase road machinery, costing in the aggregate of $10,000 on the installment plan, extending over a period of two years, without first obtaining the approval of a majority of the electors of the county.' . . . it would seem that it would be proper to purchase the said piece of equipment under an installment plan where . . . one-half is paid from the cash on hand and . . . one-half . . . the next fiscal year."

18. W, 639, 13 June 52: "The Honorable G. E. Comer, District Judge of the fourth Judicial District, entered a judgment and Decree under date of June 12, 1952 ordering and directing the board of county commissioners and the County Surveyor to immediately replace and restore the Maclay Bridge . . . "
property had been stolen from Missoula County. The property in question was a deep freeze unit. The charge was brought under section 94-2721 of the revised codes of Montana. The state had to establish beyond a reasonable doubt that Bourdeau had received the freeze unit knowing it had been stolen, and that Missoula County was the owner of the property.

The evidence tended to show that in June, 1950 the county surveyor "ordered and received a deep freeze from the Folsom Company of Missoula, Montana." The surveyor charged the freezer to Missoula County and delivered the property to Bourdeau's home. Although the Folsom Company had delivered the freezer to the county surveyor, it made a "sworn and written claim to Missoula County" for the price of the freezer; the bill making no mention of a freezer unit, listed such items as a counter shaft and pulley. The bill was paid from county funds.

The verdict of the Fourth District Court found

19. Mont. Rev. Code 1947, § 94-2721: "Every person who for his own gain or to prevent the owner from again possessing his own property buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison . . . ."


Bourdeau guilty.²² The judgment pronounced against him was that he be confined in the state prison for a period of two years. Bourdeau appealed his case to the state Supreme Court, and this judicial body reversed the judgment of the lower court.

The opinion delivered by Justice Freebourn of the Supreme Court maintained there was no legal evidence presented "that Missoula County was the owner of the deep freeze."²³ and that the defendant's motion that the trial court instruct the jury to return a verdict of not guilty should have been granted. Although the actions of the surveyor and the Folsom Company were contrary to express provision of law and public policy which made the entire transaction unlawful,²⁴ the actions of neither of these participants could in any way bind the county.²⁵ Since the surveyor acted without authority or approval of the commissioners, the Supreme Court further stated, no legal evidence would be available to show that Missoula County was the owner of the deep freeze. The county never

²² W, 493, 17 Dec. 51: "On December 14, 1951, a jury in this court found B. A. Bourdeau guilty of receiving stolen property, a felony . . . . Judgment was pronounced against Bourdeau that he be confined in the Montana State Prison at Deer Lodge, Mont. for a period of two years."

²³ As noted in State v. Boyd Bourdeau, 4, supra at 81.

²⁴ Ibid.

²⁵ Ibid., 3.
purchased the freezer and never had it in its possession. In this situation the delivery of the freezer to Bourdeau was not the receiving of stolen property from the county. The lack of the surveyor's authority to purchase the property made his acts unlawful, and made the state's case against Bourdeau ineffective. 26

26. Ibid., 5: "The lack of authority for the county surveyor to order, receive, charge and purchase the freezer, made such acts unlawful and was fatal to the state's case."
CHAPTER VIII

CONCLUSION

While the first half of the twentieth century may be regarded as a period of progress for the county, there are still some who are inclined to call it the dark continent of American politics. The fact is that functionally the county has increased in importance in the last thirty years.

Fundamental to the future of the county, however, is the need for change in some of the basic features of county government. Nevertheless, the need for such changes is confronted with the major obstacles of political and vested interest which are reluctant to alter the status quo. Regardless of the difficulties which confront the efforts to modernize county government, progress must come if the county is to meet the demands modern administration levies upon it. "As organized at present it can hardly withstand the forces of state centralization and functional consolidation."

2. Carpenter and Stafford, op. cit., 101; see Snider, loc. cit., 77, for further discussion of functional consolidation.
A number of changes have been proposed for the improvement of county government in the United States. The following are several more important changes which indicate the fundamental character of the innovations deemed necessary for county government in general, as well as Montana county government in particular. (1) Populous and urban counties must be granted constitutional home rule, and be allowed to frame and adopt their own charters. (2) Small county boards elected at large are superior to the large boards and should replace them. (3) A county chief executive, elected or appointed with authority to supervise, should be adopted in all counties. (4) Consolidation of elective county offices is necessary to reduce their number.3

County government in Montana meets certain of the requirements suggested for effective county government in the United States. The Montana county board is small and thus meets the general recommendation of small boards instead of large ones. They do not enjoy constitutional home rule which has been particularly recommended for populous and urban counties. The proposal of consolidation of elective county offices seem particularly pertinent to the Montana county. All too often it appears that the county commissioners, the auditor, the clerk and recorder, the county surveyor and the county treasurer work at cross purposes, and serve only to confuse any

chance of effective coordination or cooperation among these offices.

Missoula County has managed executive leadership only by the informal device of allowing one commissioner, not necessarily the chairman, to assume the leadership and dominate the activities of the board. Nevertheless, whether a commissioner be the formal head of the board, its chairman, or just another member, the office of county commissioner in Montana requires no special qualification. Consequently, the commissioners of Missoula County have not always been adequately informed and trained to assume the position.

Missoula County has fourteen elective county offices. The board has the power to supervise the official conduct of all county officers, and the commissioners have the power to determine the number of deputy county officers.

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4. From interview with the Missoula County Auditor, July, 1952. Other reforms proposed for county government have included the adoption of improved accounting and budgeting practices, and the use of a non-property tax as a source of revenue.

5. See for example, the allegation in second brief for Plaintiff, Oct. 15, 1952, State ex rel. Taylor v. Board of County Commissioners, no. 10137, D. C., 4th, Mont: "It was obvious . . . that he [a county commissioner] does not know and understand the legal distinction between an employee such as a clerk, and a subordinate officer such as a deputy, despite his claim to knowledge of government . . . ."


The board's exercise of powers to supervise the numerous county officers, however, has not been free from personal interest.8

While much of the information for this thesis has been gained from the commissioners' journal "it must be borne in mind that the commissioners' journal is a self-serving document prepared by the clerk and recorder under the direction of the board."9 The exact intention and actions of the board are therefore not always fully recorded. This, of course, allows the commissioners freedom, for instance, to make contracts or give leases under conditions which never become part of the official record.

During the past two years the journal reveals that the commissioners have frequently asked the opinion of the county attorney on questions of legal significance.10 In marked contrast, the commissioners have rarely sought the advice of the county auditor, in spite of the duty of the board to budget and levy taxes, and to control the expenditure of money for the operation of the county.

It must be said that the commissioners have a fairly

8. See second brief for plaintiff, 12, cited above n. 5: "Yet from the moment [the auditor] took office in Jan. of 1951 to the present time the record shows her official life has been one of constant harassment by the defendant board of county commissioners."

9. Ibid., 11.

10. The deputy county attorney in an interview, August, 1952, indicated that it had been the practice of the county commissioners to ask legal advice only when they were in trouble.
effective policy when dealing with the land properties of the county. Their purchase and sale of the county's real property and supplies cannot, by the official record, be open to criticism. The nadir of their achievement has appeared in the informal elements of personnel supervision within their purview.  

Finally, there is no intent here to be unduly critical of the Missoula County Commissioners. This thesis bears out the fact that the commissioners do have effective policy and practice in the handling of many and varied elements of the county's government. The program of the county commissioners in dealing with the notices and petitions on the county roads, their supervision of the building projects, and inspection of the ditches, drains and streams of the county prove that this is true. Also, the system and routine of the commissioners in closing streets and alleys, accepting and approving plats of additions, controlling special districts, selling tax deeds, and the management of Fort Missoula, the Missoula County Airport, and the county schools show they conscientiously follow the Montana law.

11. See second brief for plaintiff, 13 and 14, cited above n. 5: "But their tactics are the shrewd and deceptive devices of tyranny which accumulate in time to show their ugly and dangerous purpose." "Can the defendant board hide forever under a cloak of 'lack of wisdom or sound discretion'."
Nevertheless, there is room for improvement in the government of Missoula County. But this is undoubtedly true, generally, for county government elsewhere in Montana, and throughout the United States.
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