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FEEES: County highway engineers of counties of first
HIGHWAY ENGINEERS: class are entitled to an annual salary of
PUBLIC OFFICERS: \$8,000.00; county highway engineers of
SALARIES: counties of the second class are entitled
to an annual salary, to be fixed by the county
court, of not more than \$4,000.00; and county
highway engineers of counties of the third and fourth classes
shall receive as compensation an amount fixed by the county court,
not to exceed ten dollars per day in counties of the third class,
and not more than \$8.00 in counties of the fourth class for each
day actually served as county highway engineer.



March 5, 1954

Honorable James J. Wheeler
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Sir:

Your letter of January 18th, 1954, requesting an
official opinion reads, in part, as follows:

"* * * We will appreciate it very
much if your office will furnish an
opinion on whether or not a county
highway engineer can receive extra
compensation over the amount set by
Statute as regular salary for the work
they do on the King Bill Program and
the State Aid King Bill Maintenance
Program. Also, in township organization
counties, such as Chariton, where the
townships have full control of the
road construction and maintenance, and
the county engineer's duties are strictly
on maintenance and construction of bridges
and culverts, can the county engineer re-
ceive additional pay over and above the
salary set by Statute for the work he
does on the King Bill Maintenance Program?"

County highway engineers in class one counties are pro-
vided for by Section 61.010, RSMo 1949, as follows:

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"In all counties of class one in this state there is hereby created the office of county highway engineer and surveyor, to be known and designated as 'highway engineer,' who shall be the chief officer in such county in all matters pertaining to highways, roads, bridges, culverts and surveys. At the general election in the year 1948, and every four years thereafter, the qualified voters of each such county shall elect a highway engineer, who shall hold his office for four years and until his successor is elected, commissioned and qualified."

The salary of the highway engineers of class one counties is provided by Section 61.050:

"In all counties of class one, the county highway engineer shall receive as total compensation for all services performed by him an annual salary of eight thousand dollars."

The appointment of county highway engineers in counties of classes two, three and four are authorized by Section 61.160, MoRS 1949, Cumulative Supplement, 1953, (House Bill No. 339 of the 67th General Assembly):

"The county courts of each county in this state in classes two, three and four are hereby authorized and empowered to appoint and reappoint a highway engineer within and for their respective counties at any regular meeting, for such length of time as may be deemed advisable in the judgment of the court. The provisions of sections 61.170 to 61.310 shall apply only to counties of classes two, three and four."

Section 61.190 MoRS 1949, Cumulative Supplement, 1953, (House Bill No. 339 of the 67th General Assembly) provides for the salary of county highway engineers of class two, three and four counties:

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"1. In all counties of the second class the county highway engineer shall receive an annual salary, to be fixed by the county court, of not to exceed four thousand dollars, payable monthly out of the county treasury.

"2. In all counties of the third and fourth class the county highway engineer shall receive as compensation an amount fixed by the county court, for each day he shall actually serve as county highway engineer. The amount so fixed shall not exceed ten dollars per day in counties of class three nor eight dollars per day in counties of class four. All such compensation shall be payable monthly out of the county treasury."

Your request, in essence, asks if a county court can pay to a county highway engineer salary more than that authorized by the above-quoted compensation statutes. The Supreme Court of Missouri in *Nodaway County v. Kidder*, 344 Mo. 795, 129 S.W. (2d) 857, laid down the general rule concerning compensation of public officers, i.e. 860:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. *Evans v. Gordon*, 245 Mo. 12, 28, 149 S.W. 638; *King v. Riverland Levee Dist.*, 218 Mo. App. 490, 493, 279 S.W. 195, 196; State ex rel. *Wedeking v. McCracken*, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute

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authorizing such payment. State ex rel.
Buder v. Hackmann, 305 Mo. 342, 265 S.W.
532, 534; State ex rel. Linn County v.
Adams, 172 Mo. 1, 7, 72 S.W. 655;
Williams v. Chariton County, 85 Mo. 645."

Applying the rule laid down in the Nodaway County case, we must hold that county highway engineers claiming compensation for their services must point out the statute authorizing such compensation. The only statutes authorizing compensation to said highway engineers are Sections 61.050, 61.190, both quoted above. It must further be borne in mind that the 67th General Assembly considered the salaries of county highway engineers. Therefore, we must conclude that this recent action by the General Assembly indicates that said General Assembly, in its wisdom, decided that county highway engineers should receive no more than the amounts specified by statute.

CONCLUSION

It is, therefore, the opinion of this office that county highway engineers of counties of the first class are entitled to an annual salary of \$8,000.00; county highway engineers of counties of the second class are entitled to an annual salary, to be fixed by the county court of not more than \$4,000.00; and that county highway engineers of counties of the third and fourth class shall receive as compensation an amount fixed by the county court, not to exceed ten dollars per day in counties of the third class, and eight dollars per day in counties of the fourth class, for each day actually served as county highway engineer.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

PMcG:vlw