

January 5, 1973

OPINION LETTER NO. 54
Answer by Letter - Klaffenbach



Honorable John Sims
Prosecuting Attorney
Newton County Courthouse
Neosho, Missouri 64850

Dear Mr. Sims:

This letter is in response to your opinion request in which you ask the following questions:

- "a) Is it the duty of a Prosecuting Attorney of a county of the third class to represent and act as attorney for a County Highway Commission (Alternative Form) organized under the provisions of RSMO 230.200 et seq.?
- "b) Does the County Highway Commission have the authority to hire an attorney to represent it?
- "c) Is it permissible for a Prosecuting Attorney to act as attorney for a County Highway Commission and to receive compensation for his services from the Commission in addition to his compensation as Prosecuting Attorney?"

It is our view that the enclosed opinions relating to the duties of the prosecuting attorney with respect to county hospitals and county planning and zoning commissions apply and present an analogous situation. That is, although Sections 230.200, RSMo Supp. 1971 et seq., make no mention of the employment of legal counsel or impose any express requirement upon the prosecuting

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attorney to represent the county highway commission established pursuant to such sections it nevertheless seems clear to us that under the provisions of Chapter 56, RSMo relative to the duties of the prosecuting attorney, the prosecuting attorney must represent the county highway commission. In our view the alternative form, county highway commission provisions merely establish another way in which certain third and fourth class counties can function in maintaining county roads.

You have cited to us the case of State ex rel. Wammack & Welborn v. Affolder, 257 S.W. 493 (Spr.Ct.App. 1924), in which the court held that a prosecuting attorney has no duty to represent a township in connection with a road bond issue. This case is not applicable because the county highway commission is a county agency performing a county function.

Thus in answer to your first question, it is our view that it is the duty of the prosecuting attorney of a county of a third class to represent and act as attorney for a county highway commission, alternative form, organized under the provisions of Sections 230.200, RSMo Supp. 1971 et seq.

It follows in view of our first holding and consistent with the enclosed opinions that the county highway commission does not have the authority to hire a private attorney to represent it.

It likewise follows that since the prosecuting attorney, in our view, must act for the highway commission as part of his official duties he cannot receive additional compensation because such additional compensation has not been expressly provided by the legislature for the performance of such duties.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 68
10/7/39, Orr

Op. No. 92
3/5/53, Vogel

Op. No. 1
6/24/64, Conley

Op. No. 131
6/26/64, Hollingsworth