

COUNTY SURVEYOR AND COUNTY HIGHWAY ENGINEER -- Sections 8009, 8019 and 8020, R. S. Mo. 1929, - Duties and salary when office of Highway Engineer abolished.

10571-72 R.S. Mo. 1929

April 10, 1933.

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Hon. John M. Bragg  
Prosecuting Attorney  
Douglas County  
Ava, Missouri

Dear Mr. Bragg:

We are in receipt of your letter of March 24th, 1933, in which you request an opinion on Sections 8009 and 8020, R. S. Mo. 1929. In connection with your request you state the following:

"The provisions of the Highway Engineer have been suspended in this county under section 2019. We now have a surveyor who contends that he is authorized to go out and do any work on the roads which to him seems necessary and that the County would be liable to him for his compensation. The County Court takes the position that the surveyor is not authorized to do any work as Ex-Office Highway Engineer, unless ordered to do so by the Court, and thereby hangs the bone of contention.

Now, what I want to know. Is the County liable to the Surveyor for work done on the roads without the order of the County Court. I am taking the position, that the County is not liable unless he is ordered to do the work by the County Court."

Upon the authority of *Spurlock, Surveyor, etc. v. Wallace et al.*, County Judges, 218 S. W. 890, a decision by the Springfield Court of Appeals, it is the opinion of this department that the Surveyor as Ex-officio Highway Engineer is entitled to compensation as such, when authorized by the county court to receive same for services which the court orders to be done, and not otherwise.

Your attention is called to the language of the court in this opinion, last paragraph under subdivision "(1)":

"If the contention made by appellant should be upheld.

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then we must necessarily hold that to vote under section 10571, and to thereunder abolish the highway engineer act meant simply a change of the manner and amount of compensation to be paid to the party acting as highway engineer, as the appellant is contending that he is duty bound to perform exactly the same service that the highway engineer would have performed, even though the people have voted out this law. We cannot lend sanction to this narrow construction, as it would appear that the purpose of sections 10571 and 10572, R. S. 1909, was to permit the people of a county to abolish the office of highway engineer, yet to leave it possible for the surveyor to perform the duties that the highway engineer would have performed had the law not been voted out, provided he acted under the orders and directions of the county court. The general intent of section 10571 was to permit the people of a county to vote out a highway engineer and to abolish the duties of such engineer, and that more was intended by said section than to merely give them the right to change the form and amount of compensation."

We believe a careful reading of the above case will furnish a satisfactory analysis of the statutory provisions relating to the subject of your inquiry. If, however, there remains some question, which in your judgment is not covered by this opinion and upon which you desire further advice, we shall be pleased to go into the matter further.

Yours very truly,

CARL C. ABINGTON  
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK  
Attorney-General.

CCA:EG