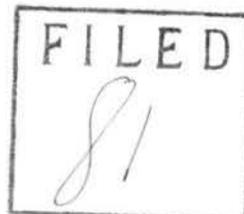


COUNTY ENGINEERS:

St. Louis County--right to hire and fire employees of Highway Department.

July 26, 1933



Hon. R. E. Schumacher,  
Associate Judge of County Court,  
St. Louis County,  
St. Louis, Missouri.

Dear Sir:

We have your request of June 13th, 1933 for an opinion from this Office upon the following questions:

" In view of section 6 of Article 36 of the Constitution of Missouri, does the County Court of St. Louis have the right to employ employees of the county working in the County Highway Garage, or does that right belong to the Highway Engineer?

Further, is it within the jurisdiction of the County Highway Engineer to dismiss any employees within his department without preferring charges and securing the consent of the County Court?"

With reference to the first paragraph, namely as to whom the power belongs to employ workmen in the County Highway Garage, we refer you to an opinion of this Department under date of January 25th, 1933, furnished to the Prosecuting Attorney of St. Louis County, a copy of which is enclosed herewith. In that opinion it was held that the County Highway Engineer had only such authority to employ workmen who came within the class of assistants to the Highway Engineer.

With reference to the contract of employment, we assume that such employment is for an indefinite term, and the rule for the termination of such a contract of employment is stated in 39 C. J. p. 70, sec. 60 as follows:

" A contract of employment for an indefinite term may, in the United States be terminated at the will of either party. "

Under Section 8011 R. S. 1929, with reference to the power of hiring employees, it provides:

"In the event the County Highway Engineer cannot properly perform all the duties of his office, he shall, with the approval of the court, appoint one or more assistants who shall receive such compensation as may be fixed by the court."

As to the meaning of the above term, "duties of his office", we look to Section 8013, R. S. 1929, which is as follows:

"SEC. 8013. TO HAVE SUPERVISION OVER HIGHWAYS OF COUNTY. -- The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

It is therefore the opinion of this Office that three conditions must be met before the County Highway Engineer can employ anyone to assist him;

- (1) The duties to be performed must be duties imposed by law upon the County Highway Engineer;
- (2) The County Highway Engineer, from lack of time or otherwise, cannot properly perform such duties for which the persons to be employed are to perform;
- (3) The employment of such assistants must be approved by the County Court.

The Highway Engineer is charged with supervision over the construction and maintenance of all roads, culverts and bridges. Such assistants as are appointed by him must come within the class of assisting the engineer in the supervision and construction of roads, culverts and bridges. The power to employ all other workmen, that is workmen employed for the purpose of executing construction, laboring on the highway or in the garage is vested in the County Court. This general authority originates in Section 36 of Article VI of the Missouri Constitution, which reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Specific authority for such is found in Section 7946, R. S. 1929, which reads, in part, as follows:

"Whenever any public money, whether arising from taxation or from bonds heretofore or hereafter issued, is to be expended in the construction, reconstruction or other improvement of any road, or bridge or culvert, the county court, township board or road district commissioners, as the case may be, shall have full power and authority to construct, reconstruct or otherwise improve any road, and to construct any bridge or culvert in such county or other political subdivision of the state, and to that end may contract for such work, or may purchase machinery, employ operators and purchase needed materials and employ necessary help and do such work by day labor. \* \* \*"

When the engineer is given power to employ such assistants as may be necessary, "with the approval of the court", the duties involve upon the engineer to employ such assistants, and the duty involves upon the county court to approve or disapprove of such assistants. Such is the construction placed upon this term in *Butler v. Sullivan County*, 108 Mo. 630, l.c. 638. In the *Sullivan County* case, the Statute gave the county collector the power to employ attorneys "with the approval of the county court" to aid the prosecuting attorney in the handling of tax suits. The Supreme Court in construing this term in the *Sullivan County* case, l.c. 638, said:

"The statute neither authorizes the county court to employ counsel nor to charge the county with liability for his compensation. The power to employ an attorney is granted solely to the collector; this compensation and the liability therefor is provided for by the law. The only power granted to the county court is to approve or disapprove of such employment, and thereby fix the status of the attorney employed by the collector as to his right to such compensation when his right to, and the amount thereof, comes to be ascertained by the court in which the tax suit is terminated, and the liability therefor fixed by the final judgment of such court."

The meaning of a power conferred upon an official which is subject to the approval of another official, is fully set out in *Makenson v. Dillon*, 171 Pac. 673, l.c. 676, as follows:

"The grant to New Mexico is to be effectuated by selection, not only of these lands granted in quantity, but also as indemnity, and they are to be selected under the direction and subject to the approval of the secretary of the interior. The words 'subject to the approval' we do not regard as giving the secretary of the interior discretion to arbitrarily refuse a selection for no reason at all. These words are to be understood to mean that the secretary of the interior shall investigate and pass upon and render judgment as to whether the lands selected are within the terms of the grant, and, if so, it is his duty to list them to the state."

It is therefore the opinion of this Office that the County Court possesses the right to employ workmen in the County Highway Garage. It is also the opinion of this Office that County Highway Engineer in contracting with assistants for an indefinite term of employment, possesses the right, without the approval or consent of the County Court to discharge such assistants, but that all other employees who are not assistants, as herein defined, to the County Highway Engineer, and who are employed by the County Court at will,

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may be discharged at any time by the County Court, and not by the Highway Engineer.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK  
Attorney-General

FER/mh