

COUNTY SURVEYOR: Entitled to salary as Surveyor and as ex officio County Engineer.

July 14, 1937.

7-16

FILED

Honorable F. N. Slocum,
Judge of the County Court of Knox County,
Baring, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following:

"Please give me your opinion on the following question.

For the month of April the Knox County Court with the Equalization Board was in session 14 days. Our Surveyor of course was with us drawing his \$70.00 for the 14 days in session. A few years ago our County voted to not have a Highway Engineer. When the Government commenced putting on special road projects the Court had to have an Engineer for that and according to law appointed the Surveyor for the Engineer for the project not for the country or dirt roads. The Court set his salary at \$133.00 per month as the project Engineer. For April he not only drew the \$70.00 as a member of that board but his entire salary as Highway Engineer. Look like salary for the 14 day should be taken out of salary of \$133.00. We are divided. Please answer soon."

Section 8030, R. S. No. 1929 provides, in part, as follows:

"In all counties wherein the services of a county highway engineer are dispensed with, as provided by section 8019 of this article, the county surveyor, shall be ex officio county highway engineer, and as such, shall perform such services pertaining to the working, improvement, repairing and maintenance of the roads and highways, and the building of bridges and culverts as provided by this article to be done and performed by the county highway engineer, or as may be ordered by the county court; and for his services as ex officio county highway engineer he shall receive such compensation as may be allowed by the county court, of not less than three dollars nor more than five dollars for each day he may be actually employed or engaged as such county highway engineer."

Since Knox County has voted against the County highway engineer law as provided in Section 8019 R. S. No. 1929, the provisions of Section 8020 set out above are now controlling in Knox County. You will notice that this section requires that the County Surveyor serve as ex officio County Highway Engineer and to perform the duties of the County Highway Engineer or such duties as may be ordered by the County Court. The County Court, therefore, has the authority to limit the duties of the County Surveyor as ex officio County Highway Engineer to certain specific projects. We assume that the County Court, in assigning these duties to the County Surveyor and fixing his compensation therefor, acted by virtue of the authority granted by this Section of our laws.

However, the compensation contemplated by Section 8020 was for the payment of services rendered by the County Surveyor as ex officio County Engineer and has nothing to do whatsoever with his fees received by reason of his holding the office of County Surveyor. Section 9818 R. S. No. 1929, however, provides for a fee of five dollars per day to the County Surveyor for his services as a member of the county board of equalization, a totally different office from that of ex officio Highway Engineer.

In the case of State ex rel Koehler v. Bulger, 233 S. W. 486, the Court had a similar question to determine. That is, whether the County Surveyor of Jackson County was entitled to a fee as County Surveyor and a fee for duties as ex officio County Engineer. In concluding that the Surveyor was entitled to two fees, Judge Graves said:

"We conclude that relator is entitled to two salaries of \$3000 each, one as County Surveyor under Section 1041 R. S. No. 1919, and one under Section 10784 R. S. No. 1919."

While we are here considering different statutes than those construed by the Court in the Koehler case, nevertheless the principle is the same, and we conclude that the County Surveyor is entitled to a fee as provided by Section 9818 R. S. No. 1929 and also is entitled to a fee as ex officio County Engineer as provided in Section 8020 R. S. No. 1929.

Respectfully submitted,

JOHN W. HOFFMAN, JR., Assistant
Attorney General.

JWH:EG

APPROVED:

(Acting) ATTORNEY GENERAL