COUNTY HIGHWAY COMMISSION: Expenses, mileage and per diem for traveling outside the county.

COUNTY HIGHWAY ENGINEER: Expenses, mileage and per diem for traveling outside the county.

COUNTY COURTS: Right to per diem for same day as County Court and County Board of Equalization.

March 5, 1937.

3-9

FILED 89

Hon. S. S. Thompson.
Presiding Judge, New Madrid County Court,
Portageville, New Madrid County, Mo.

Dear Sir:

A request for an opinion has been received from you under date of January 18, 1937, such request being in the following terms:

"I am enclosing a letter C. W. Brown, Chief Engineer State High-way Dep't. which is self explanatory. Our Clerk wrote you about one week ago in reference to this same matter.

I have another letter from Mr. Brown, who states the meeting referred to will be held in St. Louis, 2/17/18/19.37, at Statler Hotel. This is very important that we should know if, we have a legal authority to pay the Expenses Mileage and Per-diem, for the Court, and Co.Highway Engineer, and County Highway Commission, to attend this or similar meetings which under the WPA system often requires the Court and Co. Highway Engineers presents.

Relative to the County Court and Board of Equalization being held at the same time and same days and being Paid for both, Provided we actually transact Court Business.

It very often happens that Tax payers attend the Board of Equalization to have an adjustment made before paying their 1936 Taxes, due to land being deducted that is occupied by Public Roads, Ditches, Levees or land that has caved in the Miss. River, etc. We know if we transact the business and Court not in session it is illegal, and it works a hardship on the Tax payer, and since there is no law that provides that a Court cannot make a charge for both Court and Board of Equalization, so we want to know what to do in such cases, it does seem that the Court should be paid for both days

when they actually transact such business. If we are not entitled to pay, it would certainly be illegal to transact any kind of business.

Will you be so kind as to inform me on the matters above mentioned at your very earliest convenience. Thanking you in advance for an early reply, I am

P.S. We have a County Road & Bridge Fund, also a Road Refund account in addition to the regular Special Road and Bridge Fund, the latter is used in the various Road Districts as is School Money. The expenses could be paid out Road Refund Account for such expenses as above mentioned."

Under date of March 4, 1937 we rendered an opinion to Hon. R. L. Jones, Clerk of your Court, in which we answered your questions about per diem, mileage and expenses of the members of your court in attending the annual meeting of the Highway Engineers' Association in St. Louis, and in making trips to Jefferson City in connection with road matters. We refer you to that opinion, which you have doubtless seen, for our conclusions on these matters and our views on the general principles applicable to the fees and expenses of county officers, which need not be repeated here.

This leaves for answer your questions about reimbursement of the members of the County Highway Commission and the County Engineer for attendance at this and similar meetings, and also the question of the right of members of the County Court to per diem for sitting as the County Court and also as the County Board of Equalization on the same day.

I.

COUNTY HIGHWAY COMMISSION.

R. S. Mo. 1929, section 7856 provides for the creation and establishment in the several counties of this state of a County Highway Commission of four members "who shall serve without compensation". This statute eliminates any allowance of per diem to the members of the Commission, and since there is no statute giving the members of the Commission a right to mileage, no mileage can be claimed.

There remains the question of their expenses on these trips and this, according to the doctrine of State ex rel Bradshaw v. Hackmann, 276 Mo. 600, 208 S.W. 445 (1919), as explained in our opinion to Mr. Jones, will depend on whether this traveling is necessary as a part of the duties of the members of the Commission.

R. S. Mo. 1929, section 7861 directs the county court, after the completion of a highway, to convey it to the County Highway Commission "who shall thereafter have control and supervision thereover". Section 7862 gives the Commission "absolute jurisdiction and control over all highways constituting a part of the county highway system". Section 7863 provides as follows:

> "The county highway commission is hereby authorized and empowered to receive, and expend, in the construction and maintenance of county highways, any money or property that may be appropriated or donated by any municipal corporation, special road district, township, or private individual, and to use and employ whatever means, methods, or power, that may be necessary in the construction and maintenance of said county highways, including the power to build culverts and bridges, for which purposes the county highway commission is hereby empowered to employ such technical and other help as may be deemed necessary for the administration and enforcement of this article."

Section 7864 authorizes the county court to make additional contributions to the Commission and section 7865 provides for reports to the county court by the Commission "showing in detail the amount of money received, and how applied".

The language of these statutes gives the County Highway Commission broad powers and responsibilities in connection with the county highways. The use of language like "absolute jurisdiction and control over all highways" denotes a grant of power seemingly as comprehensive as could be made. The power "to use and employ whatever means, methods, or power, that may be necessary in the construction and maintenance of said county highways" would give the members of the County Highway Commission the right to travel outside the county, if such travel was necessary to the proper and efficient discharge of the duties of their office. There is nothing in these statutes about the County Highway Commission limiting their functions to the county, or to adjudicating disputes or merely <u>sitting</u> as a Commission, and a fair construction of these statutes would give them the

right to travel and to charge their traveling expenses to the county under the circumstances just described. Doubtless the fact that the members of the Commission perform a substantial public service without any compensation would not be a sufficient legal reason for reimbursing them for their expenses if the statutes did not warrant such reimbursement, but this fact makes the finding of such authority more agreeable.

II.

COUNTY ENGINEER.

The County Highway Engineer in your county, under R. S. Mo. 1929, section 8008, receives a salary in an amount to be fixed by an order of your County Court, not to be less than $300.00 nor more than $2,000.00 per annum. Therefore no question of per diem arises. There is no statute allowing the Engineer any mileage and therefore he is in the same position as the judges of the County Court and members of the County Highway Commission as to mileage. Under section 8013 the County Highway Engineer is given "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". In our opinion the reasons governing the allowance of expenses of the County Highway Commission for attendance at the Highway Engineers' Association meeting and similar meetings apply likewise to the attendance of the County Highway Engineer at such meetings, limited, of course, as are such expenses of the Highway Commission, to such expenses as are necessary to the proper and efficient discharge of the duties of the office.

PER DIEM AS COUNTY JUDGE AND
MEMBER OF COUNTY BOARD OF
EQUALIZATION FOR SAME DAY.

In our opinion to Mr. Jones we quoted from sections 2092 and 11780 of the Missouri Statutes, which fix a $5.00 per diem for judges of the county court "for each day necessarily engaged in holding court".

R. S. Mo. 1929, section 9815 provides as follows:

"The judges of the county court, the county surveyor, the county assessor, the sheriff, and the county clerk shall receive $5.00 per day for each day they shall act as members of the county board of equalization: Provided, that this section shall not apply to boards of equalization who are paid a salary."

In Throop on Public Officers, section 496, it is stated as a general proposition that where the same person holds two offices, and the offices are compatible, their holder can receive compensation attached to each. This is announced as the rule in Missouri, citing State v. Walker, 97 Mo. 162, 10 S.W. 434 (1888), overruling State v. Holladay, 67 Mo. 64 (1877). A familiar illustration of this principle is a circuit judge who also sits as a jury commissioner and receives the salary of both offices (See for example R. S. Mo.1929, section 1172).

However, Mr. Throop in the same section referred to above, after stating that principle, continues as follows:

> "Where the compensation is a per diem allowance for the same day's service, the officer cannot have such allowance for the same day's service, in each of two or more offices held by him. County Commissioners v. Bromley, 108 Ind. 158."

In conclusion it is our opinion that the members of the County Highway Commission and the County Highway Engineer in New Madrid County cannot be allowed mileage or per diem in attending a meeting outside the county, of the Highway Engineers' Association, or in going to Jefferson City or elsewhere outside the county on highway matters, but that they can be allowed their expenses on such trips when such trips are necessary to the proper and efficient discharge of the duties of their offices. It is our further opinion that members of your county court cannot receive per diem for the same day, as both members of the county court and as members of the County Board of Equalization.

Very truly yours,

EDWARD H. MILLER,
Assistant Attorney General.

APPROVED;

J. E. TAYLOR
(Acting) Attorney General.