

ROADS: Road overseers can only be appointed in February after the convening of the new county court.

December 16, 1938



Honorable F. T. Jared
Associate Judge, 1st District
Springfield, Missouri

Dear Sir:

We have your letter of December 14, 1938, which reads as follows:

"Since the political complexion of our County Court in this (Greene) County changes on the first of the year, and since our county has been divided into only four Common Road Districts, and since the Road Overseers of these districts receive the statutory limit of \$3.00 for each and every week day of the year and sufficient travel expense to make their monthly remuneration total \$125.00 per month, and since there seems to be rumor that the new County Court may attempt to discharge them on Jan. 1st and put in new overseers, already selected, I have been importuned to write to your office for a ruling on the matter.

"Sec. 7870, R. S. 1929 provides that 'All road overseers shall be appointed by the county court of the county at the February term of said court. This was done last February by the present court, as it has been done in this county for a great many years. These appointments were made for a term of one year (were made last Feb.).

"Sec. 7875 R.S. 1929 requires that the overseer 'shall, in February of each year,

make to the court his final report and settlement, etc.'

"Sec. 2083 R.S. 1929 provides that 'the County Courts may alter the times for holding their stated terms,' etc. This has been done in this county prior to the present court's election, changing the regular terms to correspond with the calendar quarters. This court has followed this custom in opening our court and keeping the county court records. But have each year named our road overseers in February, also all other road employes, about 40 besides the overseers.

"Are the overseers entitled to hold their places until the 1st of February, and, if so, would the other road employes, which in all prior years have been so elected, take the same status?

"I should appreciate your opinion on this matter so soon as your convenience will permit."

Section 7870, R. S. Mo. 1929, reads as follows:

"All road overseers shall be appointed by the county court of the county at the February term of said court. No person shall be eligible to the office of road overseer, except he be a citizen of the road district for which he may be appointed, or of an incorporated town or village within the bounds of such district and be a practical road builder, or possessed of technical or scientific knowledge of such work (shall be over twenty-one and under sixty years of age and moreover be able to read and write.) Such officers shall receive a compensation of not less than two nor more than three dollars per day for each day actually and necessarily employed as such overseer, to

be fixed by the county court annually
in the month of March, by order of record."

Section 7875, R. S. Mo. 1929, reads as follows:

"It shall be the duty of every road overseer to make a detailed report, under oath, to the county court at each regular term thereof, and he shall, in February of each year, make to the court his final report and settlement, under oath, of all moneys received and expended by him, from what source received and on what account expended, but the county court shall not approve the final settlement on account of services or otherwise, or allow him any credit therefor, until said overseer has filed a poll tax list as provided in section 7879."

In Section 7875, Section 7879 was mentioned but said section was repealed by the Laws of 1937, page 440. The part repealed by the Laws of 1937, page 440, was in reference to the filing of the poll tax list as provided in Section 7879. The Legislature in repealing Section 7879, which refers to the filing of the list for collection of the poll tax, did not specifically or by implication repeal all of Section 7875, supra. It only repealed by implication that part of Section 7875 which required road overseers to file a poll tax list. That part of Section 7875 requiring a final report, under oath, in February of each year, is still in effect. It was so held in the case of *Kristanik v. Chevrolet Motor Co.*, 70 S. W. (2d) 890, Par. 2, where the court said:

"The law is well settled that whether the part challenged be a whole section or a part of a section, the remainder of the act or section will stand if after eliminating the bad part 'enough remains which is good to clearly show the legislative intent, and to furnish sufficient details of a working plan by which that intention may be made effectual.' *State ex inf. v. Duncan*, 265 Mo. 26, 45, 175 S. W. 940, 945, Ann. Cas. 1916D, 1; *State v. Fenley*, 309 Mo. 520, 528, 275 S. W. 36. The legislative intent

as to separability of the provisions of the Workmen's Compensation Act is found in section 3375, R. S. 1929 (Mo. St. Ann. sec. 3375, p. 8293)."

All parts of an act should be read together. The fact that the county court shall make the appointment of all road overseers at the February term of said court, and the fact that the road overseers shall make their final report in February, shows it was the intention of the Legislature that the appointments be made in February and expire in February, and not when the county court convenes on January 1st.

In the case of *Holder v. Elms Hotel Co.*, 92 S. W. 620, Par. 1, the court said:

"In construing a statute the legislative intent must be kept in mind, if it may be ascertained, and the whole act, or such portions thereof as are in pari materia, should be construed, together. *Keeney v. McVoy*, 206 Mo. 42, 103 S. W. 946. * * *"

Section 7870, supra, specifically and unambiguously sets out the time that the appointment of road overseers is to be made, and further fixes the time of fixing the compensation, which would be in March.

In the case of *Maltz v. Jackoway-Katz Cap Co.*, 82 S. W. (2d) 909, Par. 2, the court said:

"It is a familiar rule of construction that where a statute uses words which have a definite and well known meaning at common law it will be presumed that the terms are used in the sense in which they were understood at common law, and they will be so construed unless it clearly appears that it was not so intended." 24 R. C. L. p. 994, sec. 236, and Perm. Supp., pp. 1641, 1642; *State v. Murlin*, 137 Mo. 297, 38 S. W. 923."

Section 2083, R. S. Mo. 1929, does not apply to the appointment of road overseers, but only applies to the time of holding county court. As stated in your request, the time for the meeting of the county court has been properly changed to the calendar quarters set out in Section 2083, and the county court taking office January 1st may discharge, for cause, road overseers, but cannot make any appointments until February.

CONCLUSION

In view of the above authorities, it is the opinion of this department that road overseers can only be appointed or reappointed in February, which, under ordinary circumstances, would be the first meeting of the county court in any specific year, and also taking into consideration the changing of the time of the meeting of the county court, it is further the opinion of this department that appointments of road overseers can only be made in February and their final report must be made in February.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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