

COUNTY COURTS:

COUNTY HIGHWAY ENGINEER:

County Court must determine whether applicant for position as county highway engineer meets statutory requirements as to qualifications.

July 27, 1939 <sup>7/28</sup>



Mr. Edward V. Long  
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Dear Sir:

We have received your letter of July 15th, which reads as follows:

"Please inform me whether or not the County Court can under Sections 8806, 8809, 8819, Revised Statutes of Missouri, 1929, appoint anyone as Highway Engineer who is not a civil engineer and who can not qualify as a practical civil engineer.

To qualify as a practical civil engineer what would be required to be the extent of his training.

This opinion is requested of me by the County Surveyor."

You have referred us to Sections 8806, 8809 and 8819 of the Revised Statutes of Missouri, 1929. These statutes all refer to juries. No doubt you refer to Sections 8006, 8009 and other sections contained in Article VIII, Chapter 42, R. S. Mo. 1929.

Section 8006 provides as follows:

"There is hereby created in the several counties of the state of Missouri the office of county highway engineer, and the county courts of each county in this state are hereby authorized and empowered to appoint, and may appoint a highway

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engineer within and for their respective counties at any regular meeting for such length of time as may be deemed advisable in the judgment of the court, at a compensation to be fixed by the court."

As to the qualifications of such county highway engineers, Section 8009 reads in part as follows:

"The county highway engineer shall be a resident of the state of Missouri, and shall be skilled in the laying of drains, in bridge, culvert and road building and general road work, and he shall have a practical knowledge of civil engineering, and shall be active and diligent in the discharge of his duties. \* \* \* \*"

It will be observed that the above statutes do not require the county highway engineer to be a civil engineer but require only that he "shall have a practical knowledge of civil engineering". Of course if a candidate for such office is not a civil engineer, or if he cannot qualify as a practical civil engineer, as you suggest in your letter, it is clear that such person would not have a "practical knowledge of civil engineering".

We can see no distinction between the term "qualifying as a practical civil engineer" and the statutory term "practical knowledge of civil engineering". Certainly if a person could not qualify as a "practical civil engineer" he would not be possessed of "practical knowledge of civil engineering". Consequently, if a candidate cannot qualify as a practical civil engineer we are of the opinion that the county court, if it so finds, is without authority to appoint such candidate as county highway engineer.

The statutes do not state the extent or amount of training a person must have in order to qualify as a practical civil engineer. This is a matter which appears to have been left to the judgment and discretion of the county court. The county court is given the exclusive right to appoint such officer.

In the case of Langston v. Howell County, 79 S. W. (2d) 99, the Supreme Court of Missouri, in commenting on a particular declaration of law given by the lower court, said:

"If the declaration of law means that the discretion and power to select a county highway engineer and fix the length of term for which he is appointed is vested in the county court, we also concur therein."

Therefore, since the "power to select a county engineer" is in the county court, the power also to determine whether such person is possessed of the necessary statutory qualifications must, of necessity, also be lodged in said court. Since the county court only can appoint, and since the right to determine the qualifications is not given to any other person or body, it would follow that the county court must apply the statutory qualifications and determine whether the applicant has sufficient knowledge and experience to qualify.

Section 8011, R. S. Mo. 1929, provides that the county court may, if it so desires, appoint the county surveyor to the office of county highway engineer. As to this appointment and the qualifications for the office which the surveyor must possess, Section 8011 reads as follows:

"The county court of the several counties in this state may, in their discretion, appoint the county surveyor of their respective counties to the office of county highway engineer, provided he be thoroughly qualified and competent, as required by this article; \* \* \* \*".

Here again it appears that the duty is placed upon the county court to determine whether or not the county surveyor is "thoroughly qualified and competent, as required by this article".

The case of State v. Starkey, 49 Minn. 503, 52 N. W. 24, throws some light on the proper construction which should be placed on Section 8009 as to the qualifications a county highway engineer should possess. In that case an ordinance of the

City of St. Paul, Minnesota, authorizing the appointment of a building inspector, provided that he should be a "practical architect and sanitary engineer". The court held that this expression meant a person having a professional knowledge of architecture and a practical experience in superintending the construction of various kinds of buildings, including plumbing and drainage. More particularly, the court said:

"The term 'practical architect and sanitary engineer' should not be given too narrow or technical a construction, but should be considered in connection with the nature of the business and duties required of the officer, which relate, not so much to the styles of the architecture, external finish, or matters of ornamentation, as a knowledge of the principles of architecture as practically applied in determining the strength, quality and adaptation of materials and the proper foundation for structures, and also in estimating and calculating the proportionate strength of walls, timbers, columns, and supports, and the strain or pressure to which they may be subjected, in conformity with the rules of the department."

#### CONCLUSION

We conclude, therefore, that since the county court has the exclusive right to appoint the county highway engineer, such court must determine whether or not an applicant for such position has a "practical knowledge of civil engineering". If the county court finds that the applicant cannot qualify as a practical civil engineer, or that he does not have a practical knowledge of civil engineering, then such court is without authority to appoint such person. Further, that the statutes do not specify the amount or extent of training or experience that an applicant must have in order

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to possess "practical knowledge of civil engineering", and this is a matter which, by necessity, must be left to the judgment of the county court.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

JFA:VC