

COUNTY SURVEYORS: A county surveyor, upon being appointed county highway engineer, in counties containing less than 50,000 inhabitants and in which the County Highway Engineer Act is in effect, is entitled to retain his fees as surveyor as well as to receive his salary as highway engineer. The same is true in counties having a population between 20,000 and 50,000 after January 1, 1941.

December 9, 1940

Mr. J. C. Shelton  
Member Clay County Court  
Liberty, Missouri



Dear Judge Shelton:

We have your letter of December 3d requesting an opinion upon the following facts:

Whether your County Surveyor, who has been appointed County Highway Engineer, is entitled to retain his fees as Surveyor as well as to receive his salary as County Highway Engineer.

We assume from your letter that the provisions of Revised Statutes of Missouri, 1929, Chapter 42, Article 8, otherwise known as the "County Highway Engineer Act," is in full force and effect and that the same has not been suspended under the terms of Section 8019. In counties such as Clay, with a population of under 50,000 inhabitants, your County Surveyor upon being appointed County Highway Engineer is not only entitled to a salary within the limits of \$300 to \$2000 per annum as specified in Section 8008, but he may also retain his fees as County Surveyor under the provisions of Section 8011, R. S. Mo. 1929, as repealed and reenacted by Laws of 1939, page 674, which reads in part as follows: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; and when so appointed, he shall receive the compensation fixed by the county court, as provided in Section 8008, in lieu of all fees, except such fees as are allowed by law for his services as county surveyor: \* \* \* \* \*

The court in *Cummins v. Kansas City Public Service Company*, 334 Mo. 672, 66 S. W. (2d) 920, l. c. 931, uses the following language:

"It is, of course, fundamental that where the language of a statute is plain and admits of but one meaning there is no room for construction."

It is, therefore, the opinion of this office that your County Surveyor may retain his fees as Surveyor as well as receive his salary as County Highway Engineer.

In regard to the status of the law after January 1, 1941, this may be said:

The reenactment of Section 8011 (Laws, 1939, page 674) follows the former section verbatim with the exception of the following added proviso:

"Provided, further, after January 1, 1941, that in all counties in the state which contain, or which may hereafter contain not less than twenty thousand inhabitants or more than fifty thousand inhabitants the county surveyor shall be ex-officio county highway engineer, and his salary as county highway engineer shall not be less than twelve hundred dollars per annum, nor more than two thousand dollars per annum as shall be determined by the County Court."

In view of this added clause the county surveyor becomes the ex-officio county highway engineer and the court's former privilege of appointment and the surveyor's former privilege of acceptance or refusal are terminated. His salary as ex-officio county highway engineer was increased and fixed within the limits of \$1200 to \$2000 per annum and the same is compensation for his duties as ex-officio highway engineer.

In State ex rel. Koehler v. Bulger, 289 Mo. 441, the court, in construing what is now the second proviso of our present Act, held that the phrase, "the county surveyor shall be ex officio county highway engineer, and his salary as surveyor and ex officio county highway engineer shall be not less than three thousand dollars and not more than five thousand dollars, as may be fixed by the county court" had reference to ex-officio duties and ex-officio salary only, and that the salary of the ex-officio county engineer should not be less than three thousand dollars in addition to his salary as county surveyor. The court uses the following language (l. c. 451):

"It specifically mentions the things repealed, but no part of the Surveyor's Act, or the act concerning his salary, are mentioned. So we repeat what we said as to the Act of 1909, that the words 'as county surveyor and ex officio county highway engineer' as used through all these acts has reference to the office and to the duties of the highway engineer, and the pay there mentioned is to cover those duties, and not to cover the duties of the county surveyor as such. For services as county surveyor, the salary is fixed at \$3,000 per annum. For 'county surveyor and ex officio county highway engineer' the salary is not less than \$3,000 nor more than \$5,000. More than the

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minimum of \$3,000 cannot be claimed, unless the county court has so ordered. The \$3,000 is fixed by law, and must be paid."

It is, therefore, the opinion of this office that after January 1, 1941, in counties having a population of between 20,000 and 50,000 inhabitants and in which the County Highway Engineer Act has not been suspended under the provisions of Section 8019, the county surveyor becomes the ex-officio county highway engineer in accordance with the terms of the last proviso of the statute above quoted (8011), and, in which event, he would also retain his fees as county surveyor.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney-General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney-General

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