

COUNTY SURVEYOR: Should budget his compensation and expenses as ex-officio county highway engineer under Class 4 - to be paid out of the general revenue.

February 5, 1942

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Hon. Joseph L. Gutting
Prosecuting Attorney
Clark County
Kahoka, Missouri

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Dear Sir:

We are in receipt of your request for an opinion, which reads as follows:

"I have been advised that years ago Clark County voted under section 8668 R. S. Mo 1939 (County Highway Engineer) to suspend the provisions of the law relating to the appointment and duties of a county highway engineer. This county has a population of about 12000.

"This being true by the next section (8669) I find that the County surveyor shall be ex-officio county highway engineer and perform the duties to be done and performed by the county highway engineer; ' 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. The County court may empower the county highway engineer, or the county surveyor when acting as county highway engineer, to em-

ploy such assistants as may be deemed necessary to carry out the Court's orders and at such compensation as may be fixed by the Court-----'.

"I construe the above section to mean that the county surveyor is ex-officio county highway engineer if Clark County has voted to suspend the operation of the county highway engineer law as set forth in said section 8668 and the County Court cannot prohibit him from acting as such and he shall perform the duties as county highway engineer 'or as may be ordered by the county court; ---' and shall get not less than three nor more than five dollars per day at the discretion of the said Court. Also the Court may appoint assistants.

"Question: Should the county surveyor as said county highway engineer make a budget as other county officials and should he and any assistants be paid out of class four (the salary fund) or should they be paid out of the road fund?

"Also can the collector or the assessor call on the County surveyor to do work in straightening out land surveys or descriptions and the surveyor get his pay from the County (he gets no salary in this county)?"

In your first question you inquire if the county surveyor and his assistants receive their salary out of the general fund or the road fund, and should they present a budget to the county, the same as other county officials.

We are presuming that the payment to which you refer is the payment of a county surveyor, as ex-officio engineer. The county surveyor himself only receives fees and is not on a salary, but, after the suspension of the office of county highway engineer, the county surveyor becomes the ex-officio county highway engineer and is entitled to a certain amount per day while actually employed. He is entitled to this compensation under Section 8669 R. S. Missouri, 1939, which partially reads as follows:

" * * * In all counties wherein the services of a county highway engineer are dispensed with, as provided by section 8668 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. The county court may empower the county highway engineer, or the county surveyor when acting as county highway engineer, to employ such assistants as may be deemed necessary to carry out the court's orders and at such compensation as may be fixed by the court, not to exceed the sum of four dollars per day for deputy county highway engineer nor more than three dollars per day for each other assistant for each day they may be actually employed."

The county surveyor acting as ex-officio county highway engineer is a county officer, and his compensation must be budgeted under Class 4, as set out in the Session Laws of 1941, page 650,- which reads as follows: (l.c.651)

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendable nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

It will be noted, in reading Section 8669, supra, that it is specifically stated:

"* * * 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.
* * * ."

This portion of the section also empowers the county surveyor, when acting as county highway engineer, to employ necessary assistants who shall receive compensation fixed by the court not to exceed the sum of four dollars a day for the deputy county highway engineer nor more than three dollars per day, for each other assistant, for each day they may be actually employed.

The compensation for the surveyor acting as county highway engineer, and his assistants, is specifically set out but does not state out of which fund the salary must be paid.

In the case of State v. McElroy, 274 S. W. 753, l.c. 754, the Supreme Court, in passing upon a similar situation said:

" * * * The law, after creating the office and prescribing the duties, fixes a salary of \$125 per month for the performance of those duties. The law does not say from what fund this salary shall be paid. We realize that in the creation of an office, the law-makers might designate a fund out of which the salary shall be paid, and this fund may be other than the salary fund of the county. But such was not done in this case. In such situation it will be presumed that the Legislature intended the salary to be paid as other official salaries are paid, i. e., out of the salary fund of the county. We think this to be clear and without doubt. It is urged however that a parole board for St. Louis was enacted at the same time, and that such law, in terms, designated the salary fund. We do not think that this fact changes the presumptive intent of the Legislature in the act before us, discussed above."

It is therefore the conclusion of this Department that since the county surveyor, acting as county highway engineer, receives compensation in the nature of a salary, it is necessary that he have this compensation presented in the budget to the county court.

It is further the opinion of this Department that this compensation should be placed in Class 4, the same

as salaries for other county officers.

We are also of the opinion that the salary can only be paid out of the general revenue, and not out of the road fund.

Your next question inquires: Who can order the county surveyor to perform work? You specifically ask: " * * can the collector or the assessor call on the County surveyor to do work in straightening out land surveys or descriptions and the surveyor get his pay from the County * * * ?"

We are assuming that the work performed, about which you inquire in your second question, is that of county surveyor, and not that of ex-officio county highway engineer.

The county surveyor of Clark County is only on a fee basis, for the reason that the population of Clark County, according to the 1940 census, is only 10166.

Section 13425 R. S. Missouri, 1939, sets out the specific fees which are allowed the county surveyor. The duties of the county surveyor to make surveys are set out in Sections 13198, 13199, 13202, 13203 and 13204, R. S. Missouri, 1939. After a careful search of Chapter 90, R. S. Missouri, 1939, which refers to the duties of the county surveyor, we find no authority granted the county collector or the county assessor to demand the county surveyor to do any work in reference to their official office. However, under Section 13198, supra, the county court, which is a court of record, may demand a survey of certain land to which the title is in dispute before such court. This may happen in case of a dispute over real estate taxes which may be before the court on account of the error, or mistake, of the assessor or collector. If he is ordered by the proper authorities of the county to make such survey he is entitled to his fees, as set out under Section 13425, supra, which must be paid by the county.

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It is therefore, the conclusion of this Department that the county collector and county assessor cannot demand the county surveyor to do work in straightening out land surveys or descriptions, but, if he is ordered by the county court to make such a survey he is authorized to collect from the county the fees allowed him under Section 13425 R. S. Missouri, 1939.

Respectfully submitted

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APPROVED:

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