

OFFICERS: Surveyor may appoint deputy in counties with population between 20,000 and 50,000 inhabitants and such deputy may act as the deputy county highway engineer.

August 17, 1943



Mr. B. F. Walther  
County Highway Engineer  
St. Francois County  
Farmington, Missouri

Dear Mr. Walther:

The Attorney-General wishes to acknowledge receipt of your letter of August 14, 1943, in which you request an opinion of this department. Your letter, omitting caption and signature, is as follows:

"I would like to have an opinion from you upon the following question:

"I am the duly elected, qualified and acting County Highway Engineer of St. Francois County, a county that has more than 20,000 and less than 50,000 inhabitants. I am also the County Surveyor of said county, and by virtue of being elected to the office of county surveyor, am ex-officio county highway engineer in accordance with Section 8660 R. S. Mo. 1939.

"I expect to be called to military service sometime soon and would like to know whether I have the power to appoint a deputy county highway engineer and county surveyor to fill out my term of office. I assume that if I do have such power, that I can make such arrangements as I may deem proper with the person so appointed in so far as his compensation is concerned.

"I would appreciate an early opinion from you on this question."

As will be noted from your letter set out above, St. Francois County has a population of between 20,000 and 50,000 inhabitants. Section 8660, R. S. Mo. 1939, provides that in counties the size of St. Francois County the surveyor shall be the ex officio county highway engineer. This proviso which is the last proviso in Section 8660 aforesaid, prescribes the following:

"\* \* \* 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."

We also find in the provisions of Section 8660 of the Revised Statutes aforesaid, that the county court of several counties in this state may, in their discretion, appoint the county surveyor of their respective counties to the office of county highway engineer. This part of the section aforesaid provides 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; \* \* \*"

This part of the section aforesaid we feel does not apply in your case in view of the fact that in counties containing the number of inhabitants which your county does, the surveyor is automatically the county highway engineer and it then is not necessary that he be appointed as such by the county court.

We next wish to refer you to Section 13208, R. S. Mo. 1939, which pertains to the appointment of a deputy by the surveyor, and which provides as follows:

"Deputies may be appointed by any surveyor who, before they proceed to discharge their duties, shall take an oath well, truly and faithfully to discharge the duties of deputy surveyors."

This provision clearly gives you as surveyor of St. Francois County the right to appoint a deputy to perform the duties of your office in case you should be absent or unable to attend to such duties yourself.

It will be noted from the provision that there is no term of office specified in the section relating to deputies and neither is there any compensation fixed for the payment of such deputies. In case there is a provision for deputies by statute and there is no compensation fixed by such provision, such compensation must be paid by the officer employing such deputy and not from the public treasury. See 46 Corpus Juris 1062.

We further wish to call attention to the fact that where there is a statute providing for the appointment of a deputy, such deputy may perform all of the duties pertaining to the office of surveyor, where if there was no such provision as to deputies, such deputy could only perform the ministerial acts pertaining to such office.

Section 8660, cited above, also provides the following:

"\* \* \* In the event that the county highway engineer cannot properly perform all the duties of his office, he shall, with the approval of the court, appoint one or more assistants, who shall receive such compensation as may be fixed by the court; \* \* \*"

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In case the county court was called upon to appoint a county highway engineer, we feel that the above provision would apply, but in view of the fact that in a county the size of yours the surveyor becomes automatically the ex officio county highway engineer, we do not feel that this provision will apply in such cases.

#### CONCLUSION

Therefore, it is the opinion of this Department that you, as the Surveyor of St. Francois County, said county being a county having a population of between 20,000 and 50,000 inhabitants, are the ex officio county highway engineer and that under the statute set out above you further have the power to appoint a deputy surveyor. It is further the opinion of this department that pursuant to the last proviso of Section 8660, that in acting as ex officio county highway engineer, any deputy appointed by you will also act in your stead as far as the office of county highway engineer is concerned, and that it is not necessary that an assistant be appointed in conformity with Section 8660, R. S. Mo. 1939, by the county court of your county. It is further the opinion of this department that since there is no compensation fixed by law which a deputy shall receive, that any arrangements you may make with your deputy as to the payment of such compensation, cannot be questioned.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

JSP:EG