

COUNTY SURVEYORS: Who are ex officio highway engineers must pay registration fee as provided by C. S. S. B 61, Laws of Mo. 1941.

January 11, 1944



Honorable Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. Robertson:

The Attorney-General wishes to acknowledge receipt of your letter of December 27, 1943, in which you request an opinion of this Department. This opinion request, omitting caption and signature, is as follows:

"I Have been requested by John W. Van-Arsdale, County Surveyor, to write you the following letter:

"Under Section 8660, R. S. of Missouri, 1939, in counties of over 20,000 inhabitants, the County Surveyor is ex-officio County Highway Engineer.

"Under C.S.S.B. 61, Laws of Missouri, 1941, Section 26, it is unlawful for any person to practice engineering, which involves preparation of plans and supervision of construction, for public hire, who is not a Registered Professional Engineer.

"Considering both of these laws, can a person, who is not a Registered Professional Engineer, qualify for, and hold, the office of County Surveyor and Ex-officio Highway Engineer?

"Your consideration of this question and a reply at your earliest convenience will be greatly appreciated."

January 11, 1944

It appears that your question does not involve the necessity of the registration of a county surveyor alone, but only involves the registration of a county surveyor in counties of over 20,000 inhabitants wherein the county surveyor is by statute pronounced ex-officio county highway engineer.

As far as the surveyor is concerned, it appears that an exception in Committee Substitute for Senate Bill No. 61 provides that he shall not come under the provisions of this particular statute. To substantiate my view in this matter I will call you attention to sub-section "d" of Section 17 of such bill, which is found on page 664 of the Laws of Missouri for 1941, which provides as follows:

"(d) Land surveyors whose work includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and sub-divisions thereof, but does not include any designing or supervision of construction."

In other words, it would appear that a county surveyor, whose work is merely the surveying of areas and the establishment of boundaries, is exempted from the provisions of C. S. S. B. 61. However, as stated above, your question seems to involve the proposition of whether an ex-officio county highway engineer shall pay such registration fee.

Section 8660, R. S. Mo. 1939, provides that in counties of not less than 20,000 inhabitants nor more than 30,000 inhabitants the county surveyor shall be ex-officio county highway engineer. As ex-officio county highway engineer, this officer has various duties to perform among which is the supervision of the highways of the county in which he is an officer.

We wish to call your attention to Section 8662, R. S. Mo. 1939, which provides as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have

the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

It would appear from the provisions affecting the county highway engineer that his duties as provided by statute include the designing and supervision and construction of bridges and culverts. If his duties include this, he will not be exempt under sub-section "d" of Section 17, C.S. S. B. 61. When he designs and supervises the construction of bridges, culverts etc., he is no longer surveying areas for the correct determination and description and the establishment of land boundaries but is engaging in matters which affect the public safety. We further cannot see that the mere fact a man is a surveyor and has been elected to his position by the people of the county wherein he lives, will cause him to be exempt from the payment of the registration fee as provided under C. S. S. B. 61, Laws of Missouri for 1941.

In counties containing less than 20,000 inhabitants or in any counties wherein the surveyor is not by statute ex-officio county highway engineer, it is possible that his duties will only involve the establishment of boundaries and the surveying of property for the purpose of conveyance, in which case we do not feel that it would be necessary for him to pay a registration fee as provided by the statute in question. However, where by statute he is given the power to supervise and design the construction of certain bridges and culverts, it then becomes incumbent upon him to pay a registration fee as provided by C.S.S.B. 61.

Conclusion

Therefore, it is the opinion of this Department that in counties having not less than 20,000 inhabitants nor more than

January 11, 1944

30,000 inhabitants, where by statute the county surveyor is ex-officio county highway engineer, it is necessary that he pay a registration fee and become a registered professional engineer in order to perform the duties of his office.

It should be understood from the conclusion reached in this opinion that a provision passed in 1943 is not retroactive and, of course, cannot apply to surveyors which come under this class who were elected prior to the passage of this law in 1943.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG