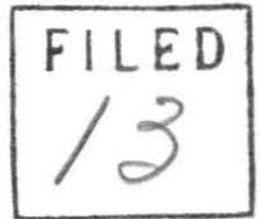


SALARIES AND FEES:) County surveyor in counties of 29,000 to
COUNTY SURVEYOR:) 50,000 inhabitants, who is also ex officio
highway engineer, can charge for fees allow-
able under statutory provisions.

September 26, 1945



Honorable J. W. Buffington
Office of the Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Sir:

Receipt of your request for an opinion, under date of September 19, 1945, is hereby acknowledged, and reads as follows:

"The county court of this county has requested the writer to obtain an opinion from your office relative to this question: The county surveyor who is also ex officio highway engineer receiving a salary as such engineer from the county in the amount provided for by statute has been called upon in the past and also very recently to survey county property at the request and direction of the county court.

"The last surveying done by him was a survey for the purpose of obtaining certain necessary data on the county hospital grounds preparatory to adding an addition to said hospital.

"The official in question has rendered a bill to the county as a charge for the last mentioned survey.

"The county court has heretofore paid him for surveys made on county property, but as there are likely to be additional surveys made with respect to building programs by the county the question now

asked is can this official charge for surveys as surveyor, which position he actually fills, notwithstanding he is being paid the maximum salary as ex officio county highway engineer?"

It is a strict rule of construction in this state, consistently adhered to by the courts, when dealing with compensation for special officials that an officer claiming compensation must be able to place his finger upon the statutory authority for same. An officer can recover compensation only when specifically authorized by statute. Williams vs. Chariton County, 85 Mo. 645 (1885); State ex rel. vs. Adams, 172 Mo. 1 (1903); Hill vs. Butler County, 195 Mo. 511 (1906). It is said that an officer in Missouri is presumed to render his services gratuitously unless some specific statutory authorization is found for the payment of such services. King vs. Riverland Levee District, 279 S. W. 195, 196 (1926).

Section 13425, R. S. Mo. 1939, provides as follows:

"County surveyors shall be allowed fees for their services as follows: For calculating the quantity of land in each survey, when called upon by any party, the sum of thirty cents for each distance contained in the boundary of said survey.

For every survey actually made\$1.50

And the further sum of one cent for every chain lineal measure above one hundred chains.

For calculating the quantity of each division made in a tract of land, town lots excepted\$0.75

For making each plat40

For recording a plat and certificate.. .50

For every copy of a plat and certificate50

For traveling to the place of survey and returning, for every mile08

For ascertaining and planting each corner, under article 7, chapter on 'Evidence' 1.00

For recording each certificate under article 6, chapter on 'Evidence'...	1.00
For each day's attendance as a witness under article 6, chapter on 'Evidence'	1.50
For delivering depositions to the recorder under article 6, chapter on 'Evidence'35"

The courts have adopted and followed an entirely different rule with reference to the allowance of expenses; and items which could not reasonably have been foreseen by the Legislature, and which may vary from time to time depending upon the economic trend of the country. The general rule as to such matters is stated in 46 C. J., page 1018, Section 246, in the following language:

"But where the law requires an officer to do that which necessitates an expenditure of money for which no provision is made to supply him with cash in hand, he may make the expenditure out of his own funds and have reimbursement therefor, and where a public duty is demanded of an officer without provision for any compensation, the expense must be borne by the public for whose benefit it is done."

This rule has been strictly adhered to in Missouri. County of Boone vs. Todd, 3 Mo. 140 (1833); Harkreader vs. Vernon County, 216 Mo. 696 (1909); Buchanan vs. Ralls County, 283 Mo. 10, 222 S. W. 1002 (1920).

In Ewing vs. Vernon County, 216 Mo. 681, 695, the court in commenting upon this difference made between "compensation" and "expenses" said:

"* * * Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil. Therefore those statutes relating to fees, to an income, and the decisions of this court strictly construing those statutes, have nothing to do with

this case relating to outgo. Such, we take it, is the doctrine of the cases cited in the former paragraph of this opinion, and it comports with reason. Further, if the custom was to deliver a deed to the U. S. Government to be transmitted by mail, as seems to have been the case, then such delivery is reasonably well within the contemplation of the statutory duty to deliver 'to the party or his order.'

"It must not be expected that this court will throw down statutory safeguards for the protection of the treasuries of the counties of this State, or in any way countenance looseness in their business affairs. But, on the other hand we shall not construe our statutes so as to produce a harsh or ridiculous result and one not within the fair meaning of our laws.

"The conclusion we have come to comports with the general doctrine announced in 23 Am. and Eng. Ency. Law (2 Ed.), 388. 'Where,' say the editors of that standard work, 'the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. Prohibitions against increasing the compensation of officers do not apply to such cases. Thus, it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

Section 8660. R. S. Mo. 1939, 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; and when so appointed, he shall receive the compensation fixed by the county court, as provided in section 8657, in lieu of all fees, except such fees as are allowed by law for his services as county surveyor: Provided, that in counties in which the provisions of this article with reference to the appointment of a county highway engineer have not been suspended as hereinafter provided, the county surveyor may refuse to act or serve as such county highway engineer, unless otherwise provided by law. 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: Provided, however, that in all counties in this state which contain or which may hereafter contain more than fifty thousand inhabitants, and whose taxable wealth exceeds or may hereafter exceed the sum of forty-five million dollars, and which adjoin or contain therein, or may hereafter adjoin or contain therein, a city of more than 100,000 inhabitants by the last decennial census, 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, and all fees collected in such counties by the surveyor, for his services as surveyor, shall be paid into the county treasury, to be placed to the credit of the county revenue fund: Provided, also, that in the counties last above mentioned the county surveyor, as surveyor and ex officio county highway engineer, may appoint, subject to the approval of the county court, such assistants as may be necessary, and no assistant shall receive more than twenty-one hundred dollars per annum: Provided

further, that in all counties in this state which contain or may hereafter contain two hundred thousand and less than four hundred thousand inhabitants, and which county or counties contain one hundred and fifty miles or more of macadamized roads, outside of municipal corporations, and which county or counties pay to the county surveyor a salary of three thousand dollars or more annually, the county surveyor of such county or counties shall be ex officio county highway engineer: 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."

Audrain County, according to the Census of 1940, has a total population of 22,673 and therefore falls within the bracket of counties containing 20,000 to 50,000 inhabitants. The statute makes specific reference to the fees collected by the county surveyor for surveying in counties of more than 50,000 inhabitants adjoining or containing cities of 100,000 inhabitants, stating that they "shall be paid into the county treasury, to be placed to the credit of the county revenue fund." The same statute makes no such reference to counties of different numbers of inhabitants and it may therefore be presumed that if the Legislature had intended a similar disposition of surveyor's fees in other counties, it would have so enacted.

Conclusion

The county surveyor in counties containing not less than 20,000 inhabitants or more than 50,000 inhabitants, notwithstanding the fact that he is also ex officio county highway engineer,

Hon. J. W. Buffington

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Sept. 26, 1945

can charge for such fees as are allowable under the statutory provisions.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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JMA:EG