

COUNTY SURVEYORS: Qualifications of persons elected or appointed to the office of County Surveyor.

August 20, 1945

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Honorable Phil M. Donnelly
Governor of Missouri
Executive Office
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter dated August 20, 1945, requesting an official opinion of this office and reading as follows:

"There is a vacancy in the office of County Surveyor of Jefferson County. There seems to be no one who is a surveyor who wants this position. However, the Democratic County Committee and the County Court have agreed upon Ben Lucas for the position, although he is not an engineer. They claim that he has done considerable road work and they believe he could handle the road work all right. However, I doubt if he could do any surveying if it became necessary to have any surveying done. Please advise me if a person who is not an engineer can be appointed as county surveyor."

The only qualifications of persons elected or appointed as county surveyors appear in Section 13190, R. S. Mo. 1939, which reads, in part, as follows:

"At the November election in the year 1868, and every four years thereafter, the qualified voters of each county shall elect some suitable person as county surveyor, * * * * *

From the above it is apparent that no set qualifications have been promulgated by the General Assembly with respect to persons elected or appointed as county surveyor. That such omission to definitely set out such qualifications was intentional is further indicated by the provisions of Section 13697, R. S. Mo. 1939, reading, in part, as follows:

"When a new county is established, the governor shall appoint * * * six suitable persons, residents of such new county, one to act as sheriff, one as county collector, one as county treasurer, and one as prosecuting attorney, one as county surveyor, and one as coroner thereof. * * * * *

It seems to be the declared intention of the General Assembly that in each instance the qualifications of the person elected or appointed as county surveyor is to be determined by the "suitability" of such person.

"Suitable" is defined in Webster's New International Dictionary, Second Edition, Unabridged, as follows:

"That is suited to one, one's needs, wishes, or condition, the proprieties, etc., appropriate; * * * * *

We, therefore, must necessarily look into the duties imposed upon county surveyors in order to ascertain the qualifications which would render a prospective appointee "suitable." Among the duties imposed upon county surveyors are those connected with land surveying. These duties arise in connection with the establishment of land boundaries; the restoration of lost or decayed section corners; the admeasurement of dower; the partitioning of real property; the surveying of road locations - to name only a few. It, therefore, is quite clear that a person who is not qualified to do land surveying would not be a "suitable" person to discharge the duties imposed by statute upon the county surveyor.

We believe that the matters mentioned above are such as to preclude the appointment of some person unable to discharge the duties enumerated as county surveyor. While we are unable

to find any appellate court cases construing the term "suitable" as used in connection with qualifications for the office of county surveyor, yet we do find cases construing analogous statutes relating to the appointment of executors and administrators. In both Section 7 and Section 43, R. S. Mo. 1939, relating to such executors and administrators, the terms "suitable" and "unsuitable" are used. In construing these statutes our courts have repeatedly held that any inherent disabilities which would prevent the administrator or executor from faithfully and impartially discharging the duties imposed upon them under the general administration statutes have the effect of rendering such persons unqualified. We direct your attention to a portion of the opinion in *Arrington v. McCluer*, 34 S. W. (2d) 67, l. c. 71, which reads as follows:

"That Miss Arrington and her counsel believed she would likely be denied appointment as executrix unless she renounced her hostile claim to the Mellon building is more than probable. And unless she so renounced she should not have been appointed because so long as she thus claimed as her own property which the will directed should be sold and the proceeds distributed otherwise, she was not a suitable person to execute the will and not entitled to letters testamentary. This appears self-evident, and it has been properly held that persons asserting or claiming interests hostile to such a trust are not suitable persons to execute the trust. See *In re Estate of Padgett*, 114 Mo. App. 307, 89 S. W. 886; *Davis v. Roberts*, 206 Mo. App. 125, 226 S. W. 662 and cases cited (executor claiming property adversely to the estate); *State to use of Miller's Adm'r, v. Biddlingmaier*, 26 Mo. 483. The statute, section 11, Rev. St. 1919, gave her the right, she having been thereto nominated in the will, to have letters testamentary granted to her unless she were shown to be an unsuitable or improper person to execute the will, which she was so long as she asserted ownership of the property in dispute. * * * * *

August 20, 1945

Upon the principles enunciated in the case cited and those mentioned, we believe that the ability to discharge the duties imposed upon an officer is a prime requisite for appointment to such office.

CONCLUSION

In the premises, we are of the opinion that a person who is not qualified to do surveying and who is thereby unable to discharge all of the duties imposed upon the office of county surveyor is not a suitable person for appointment to the office of county surveyor.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:CP