

COUNTY HIGHWAY ENGINEER: County court in second, third and
COUNTY SURVEYOR: fourth class counties authorized to
COUNTY COURTS: appoint county highway engineer.
County court may, in their discre-
tion, appoint the county surveyor as county highway engineer.
County surveyor does not hold office as ex officio county highway
engineer by virtue of holding office as county surveyor.

September 28, 1950



Honorable Elmer Peal
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri

Dear Sir:

This office is in receipt of your recent request for an opinion which request reads as follows:

"Section 8560 of Revised Statutes provides in effect that in Counties with a population of not less than 20000., or more than 50000., that by virtue of their office County Surveyors shall be ex officio highway engineer in such Counties.

"Mr. Charles S. Reynolds, our County Surveyor states that by virtue of section 8560 above he is the County Highway Engineer; that the County Court appointed one to act for and do the work of Highway Engineer not being a Civil Engineer instead of requiring the County Surveyor to do the work of Highway Engineer; that desired to act as Highway Engineer but the County Court refused to permit him to act and appointed another to act as Highway Engineer.

"Mr. Reynolds is concerned about his right to the office of Highway Engineer under above Section, and whether the County Court had the legal right to appoint another when said Section provides that in such Counties as this (population 46,000) he is Highway Engineer by virtue of being County Surveyor.

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"I shall appreciate it if your office will give me an opinion as to the meaning of said Section and as to the rights of the Court and the Surveyor in such a situation."

In your letter you refer to Sec. 8560, R. S. Mo. 1939. This is evidently an error since that section has no relation to the problem presented by you. We infer, however, that the section to which you intended to refer was Sec. 8660, R. S. Mo. 1939.

You will note, however, this section was repealed and reenacted in 1945 (Laws of Missouri, 1945, p. 1493, Sec. 1) and substantial changes made by the State Legislature. While this section 8660, R. S. Mo. 1939, did provide that in counties which contain not less than twenty thousand inhabitants or more than fifty thousand inhabitants the county surveyor should be ex officio county highway engineer this law has been altered by the repeal and reenactment of this Section.

Said section as reenacted in Laws of Missouri, 1945, p. 1493, Section 1, now reads as follows:

"The county court 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, and such fees as are allowed by law for his services as county surveyor; 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."

Your attention is also directed to Sec. 8655, R. S. Mo. 1939, as repealed and reenacted by Laws of Missouri, 1945, p. 1493:

"The county courts of each county in this state in classes two, three and four are hereby authorized and empowered to appoint and reappoint a highway engineer within and for their respective counties at any regular

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meeting, for such length of time as may be deemed advisable in the judgment of the court at a compensation to be fixed by the court. The provisions of this article shall apply only to counties of classes two, three and four."

We think the county court now has within their discretion the right to appoint or not appoint the county surveyor to the office of county highway engineer and to discharge the county highway engineer employed by the county court and employ another at the pleasure of the county court in counties of class two, three and four.

These sections expressly confer upon the county court the power to appoint a county highway engineer and provides "the county court may, in their discretion, appoint the county surveyor of their respective counties to the office of county highway engineer * * *."

CONCLUSION

The county courts of each county in classes two, three and four are authorized to appoint a county highway engineer for such length of time as may be deemed advisable by the court.

The county court may, in their discretion, appoint the county surveyor of their respective counties to the office of county highway engineer. The county highway engineer so appointed by the county court does not hold office as ex officio county highway engineer by virtue of holding office as county surveyor.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General