

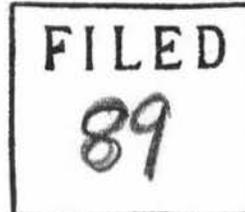
COUNTY COURT:
AUTHORITY TO
APPOINT GENERAL
SUPERINTENDENT OF
HIGHWAY DEPARTMENT:

There is no statute authorizing county court to create the office of "General Superintendent" of County Highways.

March 22, 1951

3-22-51

Honorable J. W. Thurman
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri



Dear Mr. Thurman:

We have your letter requesting an opinion of this Department. Your letter is as follows:

"Warren Lynch was the duly elected, qualified and acting Highway Engineer during the period Mr. Hauck was on the county payroll. The Court however, at the beginning of the term designated Mr. Hauck as the General Superintendent of the Highway Department and fixed his salary at \$300.00 per month 'and transportation is to be furnished'. Mr. Lynch's salary as County Highway Engineer throughout said period is fixed at \$200.00 per month. Pursuant to the making and entering of the order appointing Mr. Hauck he assumed the duties as General Superintendent and was active in this capacity throughout the period. I understand that part of the time he used his own motor vehicle for transportation and a part of the time he used the county truck. Mr. Hauck and Mr. Lynch coordinated their activities in the operation of the County Highway Department during this period."

We also have your letter of March 19, 1951, which supplements your above quoted letter. Your said supplemental letter is here quoted as follows:

"Upon receipt of your letter of March 14 I have contacted Mr. Lynch, the County Highway Engineer and Surveyor and who acted in the same capacity during the two year period involved when Mr. Hauck was

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Road Superintendent I find I was in error as to the salary paid Mr. Lynch. He tells me that the sum of \$2000.00 per year was his salary and that he had an additional allowance of not to exceed \$100.00 per month as travel expenses.

"Mr. Lynch further tells me that he was in charge of road construction during the period in question. His duties as such were to determine the places that work would be done and the machinery that would be used and the men that would be employed on such construction, but that the actual superintending of the work was done by Mr. Hauck. He further tells me that both he and Mr. Hauck had the right to hire and fire, subject of course to the approval of the County Court; that no difficulty ever arose over the hiring or firing.

"He further tells me that Mr. Hauck used the County truck approximately 90% of the time during this period and that when he used his own truck he used County gasoline therein."

We are enclosing herewith an opinion of this office under date of January 18, 1949, addressed to Honorable Roderic R. Ashby, prosecuting attorney of Mississippi county in which we held that section 8655, Laws of Mo. 1945, p. 1493, which section is the same as section 61.160, RSMo 1949, which said section is here quoted as follows:

"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 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 sections 61.170 to 61.310 shall apply only to counties of classes two, three and four."

does not authorize the county court to employ a county foreman to perform the duties of the county highway engineer. We are of the opinion that the enclosed opinion is applicable to the facts submitted in your opinion request for the reason that according to information contained in your letter under date of January

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19, 1951, the man whom the county court of Jefferson county sought to appoint as "general superintendent of the Highway Department" actually performed some of the duties of the county highway engineer and all of his work seems to have come within the scope of duties assigned to the county highway engineer by the statute. Your letter indicates that your information is that the actual superintending of highway construction was done by the man above mentioned.

Section 61.220, RSMo 1949, is here quoted, in part, 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. * * *"

We are of the opinion that it is obvious from the above quoted portions of said section that the superintending of county highway construction is a duty of the county highway engineer. We might add that we find no other statute which authorizes the county court to make such an appointment.

CONCLUSION

We are accordingly of the opinion that the appointment sought to be accomplished by the order of the county court of Jefferson county purporting to make the appointment of a general superintendent of the Highway Department is void and that therefore the payment of the warrant for \$2400.00 drawn on the road funds designated as payment of a mileage bill is illegal and void.

Respectfully submitted,

APPROVED:



J. E. TAYLOR
Attorney General

SAMUEL M. WATSON
Assistant Attorney General

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