

HIGHWAY ENGINEERS:)
PUBLIC OFFICERS:)
COMPENSATION:)

1. That the county highway engineer in a county of the third class can claim his per diem wage only for those days in which he actually performs statutory services as county highway engineer.

2. Consultation with "interested persons" other than those with whom it is the statutory duty of the highway engineer to consult, is not the performance of services as county highway engineer from which he is entitled to claim compensation.

3. The county court is vested with a broad discretion in determining whether on any given day the county highway engineer has devoted to his duties enough time to earn his daily wage.

December 22, 1953

Mr. George Henry
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Sir:

We render herewith our opinion based upon your request of November 19, 1953, which request reads as follows:

"Recently your office rendered an opinion as to the salary which county highway engineers in third and fourth class counties are to receive under authority of Section 61.190 Revised Statutes of Missouri, 1949, as amended by laws of 1953. That opinion stated that in counties of class 3, county highway engineers are to receive not in excess of \$10.00 per day, for each day actually served as county highway engineers.

"Our county court has recently appointed a county highway engineer for a period of one year. He will not be engaged in field work or office work every working day of the month, but he will hold the appointment for each working day of the month and we respectfully request the opinion of your office as to whether or not he can be paid on the basis of the number of working days in a month for holding



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the position of county highway engineer. As I recall, this bill was passed so that it would enable the various county courts to pay their county highway engineers. In as much as these are skilled men, it is practically impossible to get a man to work for \$10.00 per day and those county highway engineers who were instrumental in getting this bill before the House were of the opinion that the purpose of the bill was to enable the county courts to appoint a county highway engineer and to pay him enough salary to get the work done.

"As with other county officers, the man holding the position of county highway engineer is, of course, contacted at his office by interested persons requesting information on county highway problems. In the event that he is consulted with such problems and does no other work on that particular day as county highway engineer, is he to be considered as actually serving as county highway engineer on that day, so as to receive a day's compensation under the provisions of Section 61.190?

"We will appreciate the opinion of your office on this matter."

The request may be broken down into two separable questions. They are these:

1. He will not be engaged in field work or office work every working day of the month, but he will hold the appointment for each working day of the month and we respectfully request the opinion of your office as to whether or not he can be paid on the basis of the number of working days in a month for holding the position of county highway engineer.
2. As with other county officers, the man holding the position of county highway engineer is, of course, contacted at his office by interested persons re-

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questing information on county highway problems. In the event that he is consulted with such problems and does no other work on that particular day as county highway engineer, is he to be considered as actually serving as county highway engineer on that day, so as to receive a day's compensation under the provisions of Section 61.190?

In answer to your first question, it is the opinion of this office that payment cannot be on the basis of working day during which the highway engineer holds the appointment but must be based on the days which he actually performs services as highway engineer. The statute, Section 61.190, V.A.M.S., August Pamphlet, House Bill 339, 67th General Assembly, reads thus:

"1. In all counties of the second class the county highway engineer shall receive an annual salary, to be fixed by the county court, of not to exceed four thousand dollars, payable monthly out of the county treasury.

"2. In all counties of the third and fourth class the county highway engineer shall receive as compensation an amount fixed by the county court, for each day he shall actually serve as county highway engineer. The amount so fixed shall not exceed ten dollars per day in counties of class three nor eight dollars per day in counties of class four. All such compensation shall be payable monthly out of the county treasury."

This statute contemplates that the office of highway engineer in a third class county is not a full time job, but that the work is intermittent. It states that the highway engineer is to receive pay for "each day he shall actually serve as county highway engineer." (Emphasis ours.)

Had the legislative intent been that he should receive pay for each day he held the appointment the wage would have been on a monthly or annual basis and not on a per diem basis.

As to question No. 2, mere consultation with "interested persons" is not a statutory duty of the highway engineer. (See Chapter 61, RSMo 1949). Consultation with road overseer, being part of the highway engineer's statutory duties, (see Section 61.220 and 61.290, RSMo 1949) would be performance of services

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as county highway engineer and for which the highway engineer would be entitled to compensation.

As to the amount of time the highway engineer must serve in a given day in order to earn his per diem stipend, it is difficult to say. Casual consultation for five minutes on a given day probably would not entitle the highway engineer to his daily wage. On the other hand, the statute probably does not require that he serve a full eight-hour day in order to earn the wage. In this matter the county court is vested with a broad discretion.

CONCLUSION

It is the opinion of this office:

1. That the county highway engineer in a county of the third class can claim his per diem wage only for those days in which he actually performs statutory services as county highway engineer.

2. Consultation with "interested persons" other than those with whom it is the statutory duty of the highway engineer to consult, is not the performance of services as county highway engineer from which he is entitled to claim compensation.

3. The county court is vested with a broad discretion in determining whether on any given day the county highway engineer has devoted to his duties enough time to earn his daily wage.

The foregoing opinion, which I hereby approve was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL