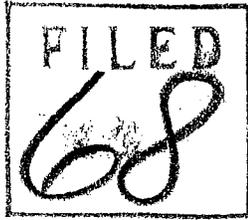


COUNTY HIGHWAY ENGINEERS:: A person serving in the dual capacity  
COUNTY SURVEYORS: : of county highway engineer and county  
COUNTY OFFICERS: : surveyor in a county of the third class  
FEES AND SALARIES: : is entitled to compensation as county  
: surveyor while engaged in making surveys  
: needed to lay out a road, but is not en-  
: titled to the pay of a county highway  
: engineer for the same service; the  
: duties of a county highway engineer do  
: not encompass the demolition of an  
: abandoned courthouse, and, therefore,  
: such person cannot be paid as county  
: highway engineer for such work.



.....  
March 1, 1955

Honorable Max Oliver  
Prosecuting Attorney  
Montgomery County  
Montgomery City, Missouri

Dear Mr. Oliver:

By letter of February 7, 1955, you requested an opinion of this office on the following questions:

- "1. What is the salary that an individual employed both as County Highway Engineer and Surveyor draw while laying out roads and surveying same? Is he performing said duty in his capacity as Engineer or Surveyor?"
- "2. Can an individual who is presently employed as Engineer be separately employed for an extra compensation to demolish an abandoned county building (Court House)? If so, can he draw his wages as Engineer while actually engaged in tearing down the Court House?"

Since Montgomery County is a county of the third class, this opinion is confined to counties of that classification.

Section 61.200 (all statutory citations herein are Revised Statutes of Missouri, 1949, unless otherwise indicated) permits the appointment of the county surveyor as county highway engineer. That section reads:

"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

Honorable Max Oliver:

sections 61.170 to 61.310; 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."

The compensation for a county highway engineer of counties of the third class is set by Section 61.190.2, RSMo Cum. Supp. 1953. That section reads:

"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."

County surveyors are compensated through fees. Section 60.110, RSMo Cum. Supp. 1953, provides the schedule of fees to which county surveyors are entitled. That section provides:

"County surveyors in counties of the third and fourth class 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

Honorable Max Oliver:

distance contained in the boundary of said survey.

For every survey actually made not to exceed \$20.00 per day 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 . . . . .

1.50

For making each plat . . . . .

2.00

For recording a plat and certificate . . . . .

1.00

For every copy of a plat and certificate . . . . .

1.00

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

.08

For ascertaining and planting each corner . . . . .

2.00

For recording each certificate . . . . .

2.00

For each day's attendance as a witness . . . . .

5.00

For delivering depositions to the recorder . . . . .

.70

For each day actually engaged in serving as a member of the county board of equalization . . . . .

5.00".

The primary duty of county surveyors is set forth in Section 60.120. That section reads:

"The county surveyor shall, within ten days, when called upon, survey any tract of land or town lot lying in his county, at the expense of the person demanding the same; provided, that his legal fees are first tendered, or that he and his deputies are not engaged in executing previous orders of survey."

The primary duties of county highway engineers are set forth by Section 61.220 and Section 61.230. Those sections provide:

"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,

Honorable Max Oliver:

No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

"The county highway engineer shall personally, or by deputy, inspect the condition of the roads, culverts and bridges of each district as often as practicable, and, upon the written complaint of three freeholders in any such district, of the bad or dangerous condition the roads, culverts or bridges of such district, or of the neglect of duty by any road overseer of any such district, or of neglect of any contractor on roads let by contract, it shall be the duty of the county highway engineer to at once visit said road and investigate the complaint, and, if found necessary, to at once cause such road to be placed in good condition."

We conclude from the above statutes that it is not the duty of a county highway engineer to make surveys needed to lay out roads. We further conclude that when the officer is engaged in surveying proposed roads, he is entitled to the compensation provided for county surveyors. However, a person serving in the dual capacity of county surveyor and county highway engineer is not entitled to the compensation of both offices for the same service performed. This office rendered on December 22, 1953, an opinion (copy enclosed) to Honorable George Henry, Prosecuting Attorney of Newton County, holding that county highway engineers are entitled to pay only for those days on which they actually perform some duties of the office, and that the county court has broad discretion in determining on any particular day whether the

Honorable Max Oliver:

county highway engineer has devoted sufficient time to his duties to earn his daily pay.

In answer to your second question, we conclude that the demolition of an abandoned courthouse is not within the statutory duties of a county highway engineer. Therefore, the county highway engineer cannot be paid as such for those services under the principles laid down in the Henry opinion, supra.

#### CONCLUSION.

In the premises, therefore, it is the opinion of this office that a person serving in the dual capacity of county highway engineer and county surveyor in a county of the third class is entitled to compensation as county surveyor while engaged in making surveys needed to lay out a road, but is not entitled to the pay of a county highway engineer for the same service. It is further the opinion of this office that the duties of a county highway engineer do not encompass the demolition of an abandoned courthouse, and, therefore, such person cannot be paid as county highway engineer for such work.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON  
Attorney General

PMcG:irk

Enc:

Copy of opinion to Mr. George Henry, Dec. 22, 1953.