

MISSOURI HIGHWAY COMMISSION:  
PROFESSIONAL ENGINEERS AND  
SURVEYORS:

Professional engineers not registered as land surveyors cannot make surveys for said Commission. Professional engineers employed by said Commission may make surveys for Commission without necessity of registering as land surveyor.

FILED  
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May 22, 1956

Honorable Robert L. Hyder  
Chief Counsel, State Highway Department  
Jefferson City, Missouri

Dear Mr. Hyder:

This will acknowledge receipt of your request for an opinion which reads in part:

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"(1) May a registered professional engineer registered in accordance with present laws of Missouri make land surveys and the surveys required for the establishment of roads in the State Highway system?

"(2) May registered professional engineers employed by the State Highway Commission make surveys and file same as directed by Section 227.050, MoRS 1949, without qualifying as a land surveyor as contemplated by Chapter 344, MoRS Cum. Supp. 1955?"

In answering your first request we shall assume that the engineer referred to therein is not an employee of the Missouri State Highway Commission, in view of your second request dealing specifically with one in your employment.

Sections 227.040-050, MoRS 1949, authorize the Missouri State Highway Commission to make surveys, plans, specifications and read:

"227.040. The engineer shall proceed to cause surveys to be made of the state highway system as designated in section 227.020, and to prepare detail plans and specifications for each part thereof as soon as practicable; provided, however,

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that wherever surveys have heretofore been made, it shall be the duty of the engineer, when practicable, to adopt and utilize such surveys, together with plans and specifications if any have been made by the highway department."

"227.050. The engineer shall, as soon as practicable, submit to the commission in writing his recommendations as to detail plans, width of right of way and surfaced roadway and type and character of construction for each county, and at the same time furnish a copy thereof to the county clerk for public information. The commission may approve, disapprove, modify or amend the proposals so recommended, and the action of the commission thereon shall be the action of the department on such subject, and shall not be modified or disturbed except by subsequent action of the commission."

Prior to the enactment of Chapter 344, MoRS Cum. Supp. 1955, by the 68th General Assembly of the State of Missouri there was no statutory requirement for registration of land surveyors. Certainly the General Assembly of the State of Missouri in enacting such law had in mind all the provisions of the chapter and law dealing with the registration of architects and professional engineers. *Smith vs. Pettis County*, 136 S.W.(2d) 282; *Barnidge vs. U.S.* 101 Fed.(2d) 295; *Howlett vs. Social Security Commission*, 149 S.W.(2d) 806, 347 Mo. 784.

In such case if the General Assembly had intended to make an exception thereto the reasonable deduction would be that the General Assembly would specifically have made such exceptions without the necessity of implying same.

Section 344.020, MoRS Cum. Supp. 1955, makes it unlawful for anyone to practice, offer to practice, or engage in the practice of land surveying without first registering as a land surveyor with the State Board of Architects and Professional Engineers.

Section 344.040, MoRS Cum. Supp. 1955, provides that any person able to show to the satisfaction of the professional engineering division of the State Board of Registration for Architects and Professional Engineers, that he has had six or more active years of land surveying or is possessed of a degree in civil engineering from an accredited college or university and passes a written examination,

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shall be eligible to register as a land surveyor. Said provision further provides that two years of acceptable work in an accredited college shall, for the purpose of determining land surveying experience, be equivalent to two years in land surveying.

Sections 344.050 and 344.060, MoRS Cum. Supp. 1955 provide that certain duly qualified and acting county surveyors and other persons during certain times and under certain conditions may be licensed as a land surveyor without the necessity of an examination.

Under Section 344.110 MoRS Cum. Supp. 1955, every registered land surveyor is required to procure a seal approved by the professional engineering division of said Board of Architects and Professional Engineers and affix his seal to all maps, plans, surveys and other documents before delivery or filing same of record.

Furthermore, Section 344.120, MoRS Cum. Supp. 1955, makes it unlawful for any recorder of deeds or clerk to file any such records or documents not having the seal affixed thereto and anyone violating said section becomes guilty of a misdemeanor and the penalty for such violation is set forth in Section 344.130 MoRS Cum. Supp. 1955.

We are inclined to construe the law as hereinabove set forth to mean that subsequent to Chapter 344, supra, becoming effective no registered professional engineer may make land surveys required for the establishment of roads in the state highway system, unless he qualify as a land surveyor provided for therein and also is registered as such with the State Board of Registration for Architects and Professional Engineers.

Our answer to your second inquiry is in the affirmative, we so hold by reason of a well-established rule of statutory construction that we consider applicable in the instant case which is, that the state is not to be considered as coming within the purview of a statute, however general and comprehensive the language may be, unless expressly named therein or included by necessary implication.

This department under date of September 27, 1945, rendered an opinion to Honorable W. R. Painter, President of Board of Managers, State Eleemosynary Institutions, a copy of which we are enclosing, holding that a full time plumber employed by State Hospital No. 2 at St. Joseph, Missouri, is exempt from the St. Joseph ordinance requiring a license for all plumbers or journeymen plumbers. This conclusion was reached by reason of the fact the Board of Managers and Superintendent of each institution are vested with very broad and general powers to manage and control all eleemosynary institutions

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and that the legislative intent was that such authority was to be exercised without interference with city ordinances.

On June 19, 1953, another opinion was written to Mr. Paul Renz, Superintendent of Farms, Missouri State Penitentiary, a copy of which we are enclosing, holding that the Missouri State Penitentiary is not required to cook the garbage it feeds to swine owned by the state and fed on state farms, under a new law requiring a permit from the Department of Agriculture, State of Missouri, prior to feeding said garbage to said swine and further requiring such garbage to be cooked. There are numerous authorities cited and quoted in said opinions to support the position taken herein.

The Missouri State Highway Commission is vested with very broad and general powers over the supervision and control of highways in this state and therefore the same rule applied therein is applicable to the Missouri State Highway Commission

Under Section 29-34, inclusive, Article IV, Constitution of Missouri, the Highway Commission has full charge of the highways in the state. See also Section 227.030, MoRS 1949, wherein the General Assembly has vested in said Highway Commission general supervision over said highways and directed said Commission to take whatever necessary steps to cause said highway system to be constructed at the earliest possible date, and further to provide for proper maintenance of said highway system, make rules and regulations for proper management and conduct of said work. That the Commission is further vested with power and authority to acquire and supply tools, machinery, supplies and materials and to pay for engineering, preparation of plans and specifications, cost of advertising, engineering supervision and contingencies in connection therewith and maintenance of the state highway system. Last, but not least, said Commission shall have the power to make all final decisions affecting said work and regulations it may deem necessary for the proper management and conduct of said work.

Said Highway Commission not only has the aforesaid authority but is vested with considerable similar authority under Chapter 226 and 227, MoRS 1949.

In view of the foregoing as stated, we are of the opinion that a registered professional engineer, employed by the Highway Commission, may make surveys and file same as directed by virtue of Section 227.050, supra, without qualifying as a land surveyor.

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CONCLUSION

It is the opinion of this department that:

(1) A registered professional engineer registered in accordance with Chapter 327, MoRS 1949, and amendments thereto, who is not registered as a land surveyor under Chapter 344 MoRS Cum. Supp. 1955, cannot make land surveys and the surveys required for the establishment of roads in the State Highway System.

(2) It is the further opinion of this department that registered professional engineers employed by the Missouri State Highway Commission may make surveys and file same as directed by Section 227.050, supra, without qualifying and registering as a land surveyor as contemplated by the provisions of Chapter 344, MoRS Cum. Supp. 1955.

The foregoing opinion which I hereby approve was prepared by my assistant, Mr. Aubrey R. Hammett.

Yours very truly,

ARH:mw

John M. Dalton  
Attorney General

Enclosures(2) Opinions.

To: W. R. Painter  
9-27-45

Paul V. Renz  
6-19-53