

Engineer:
County Engineer:

COUNTY COURTS:
SUNDAY AND HOLIDAY WORK:

A county court would be justified in paying a county engineer for county work done by the engineer on holidays and Sundays.



February 17, 1956

Honorable Paul Knudsen
Prosecuting Attorney
Caldwell County
Kingston, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"The County Court of Caldwell County has asked me to request an opinion from you in reference to the County Highway Engineer.

"Section 61.190, paragraph 2, Revised Statutes of Missouri, as amended by laws of 1953, page 385, states: 'In all counties of 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 \$10.00 per day in counties of class three nor \$8.00 per day in counties of class four.'

"The question that the County Court has requested that I present is: Under this law, can the County Highway Engineer, providing he works on a Sunday or a holiday, bill the County Court for that Sunday or a holiday, and is the County Court justified in paying for that day?"

We believe that under the above law the county court would be justified in paying the county highway engineer for each day that he worked for the county, even though such day was a legal

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holiday or was Sunday.

So far as legal holidays are concerned, there has never been any question, so far as we know, about the right of a person to work, and to be paid for working, on a legal holiday. The same is not true about Sunday, regarding which there has long been considerable ambiguity. In this regard we direct attention to Section 563.690, RSMo 1949, which reads:

"Every person who shall either labor himself, or compel or permit his apprentice or servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, or who shall be guilty of hunting game or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars."

In 1953, the Missouri Supreme Court, in the case of McKaig v. Kansas City, 256 S.W.2d 815, sustained the legality of the above section, holding that (l.c. 816) "the laws of this state that prohibit work on Sunday 'are civil, not religious, regulations, and are based upon a sound public policy which recognizes that one day of rest in seven is for the general good of mankind.* * '"

Of course, if work done on Sunday is a work "of necessity," it is, by the terms of the statute, excluded from the operation of the statute. What is and what is not a work "of necessity" is not always by any means clear. In the case of State v. Stuckey, 90 Mo. App. 664, at l.c. 666, the court stated:

"What labor should be called a work of necessity or charity has produced as much of conflict of decision as any other branch of the law, and Ringgold's Law of Sunday, 193, says: 'It is safe to say that the vagueness of these words, and the impossibility of applying them with anything like uniformity to everyday life, would cause the courts to hold the whole law void for uncertainty, if it were anything else but a Sunday law.'* * *"

If your county court believed that the work done by the county engineer on Sunday was a work "of necessity," they would certainly be justified in ordering such work to be done and in paying for it.

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Furthermore, we do not know who would be in a better position to judge when such county work was "of necessity" than would be the judges of the county court. Neither do we think that it would be at all likely that anyone would challenge the judgment of the court on this matter.

CONCLUSION

It is the opinion of this department that a county court would be justified in paying a county engineer for county work done by the engineer on holidays and Sundays.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW/ld