

COUNTIES: County Court required to provide office  
COUNTY COURTS: space and supplies to County Surveyor;  
COUNTY SURVEYORS: however, County Court determines  
SURVEYORS: adequacy of office and supplies provided.

June 10, 1963

OPINION NO. 101

Honorable William W. Hoertel  
Prosecuting Attorney  
Phelps County  
Rolla, Missouri



Dear Mr. Hoertel:

This is in response to your recent request for an opinion of this office concerning a letter which you have received from the present surveyor of Phelps County. The letter which accompanied your request, reads in part as follows:

"In Phelps County, as in many other places (counties of classes 2-3-4) it has been a common practice for the Court to pay the personal office expense of those officers who do not have, or use, rooms at the Court House - instead use their own business office. For years past, Phelps County Court has so paid the expense of offices outside the court house for prosecuting attorney, circuit judge, and the welfare department. To my knowledge, NO PHELPS COUNTY COURT has EVER provided or paid for an office, or office space - or for any of the furniture, appliances, or equipment absolutely required by the county surveyor.

"As of January 1, 1962, I requested Phelps County Court to pay me \$50 per month as rental for the adequate and convenient room space which I use as the County Surveyor's office in my residence basement. The Court paid \$50 for January, 1962, then refused other payment, and refused also to

budget the item. Refused also for the 1963 years.

"As of Feb. 1, 1962, the Phelps County Court DID offer an office at the Court House - but in my estimation the space was wholly unsuitable. AND THE COURT DID NOT, OFFER, and has never offered, to place in such an office the required FURNITURE, APPLIANCES AND EQUIPMENT. The Court assumed that I would move my PERSONAL furniture, appliances and equipment to the office the court offered. I REFUSED, and DO refuse to do this, as the Court House is a FIRE TRAP. My personal equipment would be open to the public, and would soon disappear and be carried off. Moreover, I have room in my yard for the necessary concrete monuments, stakes, steel pins, and room for painting the same that could not possibly be provided at the Court House. It would cost the Court something like \$6,000 to properly EQUIP such an office at the Court House, ....In view of the foregoing, will you kindly supply answers to these questions:

"(1) Do I have adequate legal basis for asking the Court to pay me the \$50 per month, since the Court has never offered to provide, with a suitable office, the necessary furniture, appliances and equipment to go with it?

"(2) Do I, as Phelps County Surveyor, have to provide, personally, all the appliances, furniture, and equipment - all the surveying instruments, steel tapes, sledges, picks, post hole diggers - and the drafting tools and tables, map filing cases, and truck for transport to my work in the field -- and still not be paid by the County

Court for so providing these things?

"(3) Is the Court obliged to pay me the \$50 per month for use of my basement office - and the equipment (as above) in it?"

At the outset we should note that Section 49.510, RSMo 1959, reads as follows:

"It shall be the duty of the county to provide offices or space where the officers of the county may properly carry on and perform the duties and functions of their respective offices. Said county shall maintain, furnish and equip said offices and provide them with the necessary stationery, supplies, equipment, appliances and furniture, all to be taken care of and paid out of the county treasury of said county at the time and in the manner that the county court may direct."

We believe that it may reasonably be inferred from the foregoing statute that the office or office space which the county must provide must be adequate and adaptable to the purposes of the officer for whom it is provided. However, it is the county court which initially determines such questions of adequacy and suitability. As was said in *Buchanan v. Ralls County*, (1920) 283 Mo. 10, 222 S.W. 1002, 1004, wherein the suitability of office space provided to a county treasurer was in issue, "\* \* \* whether or not such room was a reasonably suitable room for respondent's use, under the circumstances, becomes a question of fact, unless, in the light of the evidence, the impracticability or unsuitableness of such an arrangement is so obvious that the minds of reasonable men could not honestly differ about it." It cannot be said from the facts recited in the above quoted letter that the space tendered to the surveyor is so grossly unsuitable that reasonable minds could not differ as to this conclusion.

Inherent in the county court's offer of office space in the instant case is its determination that the tendered space is adequate for the purposes of the surveyor. In

Bradford v. Phelps County (Mo. Sup. 1948) 210 S.W.2d 996, 1001, our Supreme Court displayed its unwillingness to overturn a decision of a county court in the following words:

"It seems the county court's exercise of its discretion in the performance of its statutory and discretionary duty should not be interfered with, vacated or set aside, except in a case where it is clear the county court in acting abused or arbitrarily exercised its discretion (or, if such were the charge, acted fraudulently or corruptly)."

Accordingly, this office will not undertake, in the circumstances of this situation, to determine that the county court erred in finding that the offered space is adequate. Therefore, we conclude that the surveyor must accept the space made available to him by the court or make his own arrangements for office space at his own expense.

The clear mandate of Section 49.510, supra, requires that the county provide the surveyor with necessary equipment and supplies for the performance of his duties. The particular items which would fall within this area may properly be determined by the county court with the advice of the surveyor.

It should be noted that several of the items mentioned in the request obviously could not be argued to fall within the items enumerated by Section 49.510. For example, the request mentions concrete monuments which would apparently be used as corner markers. Reference to Section 60.310, RSMo 1959, indicates that the perpetuation of corners is to be accomplished by reference to trees, "and when there are no trees within a reasonable distance, the surveyor shall perpetuate his corner by erecting mounds; and when practicable, he shall require the person having the survey made to furnish suitable stones, and at each and every corner made and established a stone shall be permanently placed in the ground, and in such cases it shall not be necessary to erect mounds." Therefore, although stone markers may be used at the expense of the person requesting the survey, the alternative to such type of marker is a mound constructed by the surveyor.

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The request also inquires as to whether the county court would be obliged to provide a truck in which the surveyor would ride to his work with his equipment. Reference to Section 60.110, RSMo 1959, reveals that the surveyor is entitled to eight cents "For traveling to the place of survey and returning, for every mile." We believe this is indicative of a legislative intent inconsistent with the suggestion that the surveyor is entitled, as a matter of right, to be furnished with a vehicle.

#### Conclusion

It is therefore the opinion of this office that a county court of a county of the third class is required to furnish the surveyor of that county with an office or office space suitable to the functions of the surveyor. However, it is the county court, and not the surveyor, who determines the adequacy of the office provided. The county court is also required by Section 49.510, R.S. Mo. 1959, to provide supplies necessary to the operation of the office consistent with the provisions of Chapter 60, RSMo 1959.

This opinion, which I hereby approve, was prepared by my assistant, Albert J. Stephan, Jr.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

AJS:im/df