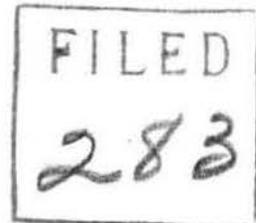


INCOMPATIBILITY:
OFFICERS:
COUNTY HIGHWAY ENGINEER:

It is incompatible for the same person to hold the office of county highway engineer of a county of the third class and to also be employed as a laborer by the same county road system.

OPINION NO. 283

September 9, 1964



Mr. Robert L. Hyder
Chief Counsel
Missouri State Highway Commission
Jefferson City, Missouri 65102

Dear Mr. Hyder:

This is in response to your letter of August 7, 1964, requesting advice from this office. Your letter reads as follows:

"A recent question in connection with the administration of the County Aid Road Trust Fund program has arisen which I feel calls for a determination by your office.

"In a county of the third class, an individual has been employed as County Highway Engineer. During the period of such employment and in examining an itemized statement of cost submitted by the same county for payment from the County Aid Road Trust Fund, our employees have found that this same individual has been employed as a laborer for 738½ hours at a specified price per hour by the County Court in connection with the maintenance of the County Road System.

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"The State Highway Commission would appreciate your advising as to whether or not the employment as the County Highway Engineer is inconsistent with employment as a laborer by the County Court of the same county and whether we should direct the attention of the County Court to the matter."

The Missouri Supreme Court has elaborated on the compatibility of the same person holding two different offices simultaneously. In State ex rel. Walker v. Bus, 135 Mo. 325, at page 338, the court states the general rule:

" * * * At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two; some conflict in the duties required of the officers, as where one has some supervision of the other, is required to deal with, control, or assist him."

(Emphasis added.)

Let us now consider the duties conferred upon county highway engineers of class three counties as enumerated by Sections 61.160 to 61.310, RSMo 1959. Section 61.220 gives the county highway engineer direct supervisory duties over the maintenance of county roads:

"The county highway engineer shall have direct supervision over all public roads of the county, * * *. He shall also supervise the construction and maintenance of all roads, culverts and bridges. * * *"

(Emphasis added.)

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Section 61.240 gives the county highway engineer inspection duties:

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

Sections 61.250 and 61.260 give the highway engineer power over road overseers as to expenditure of funds and improvement of roads. Sections 61.270 and 61.280 require the county highway engineer to report to the county court with recommendations as to what actions should be taken by the court for the repair or improvement of county roads and what part of this improvement should be let under contract.

We see from the foregoing that the county highway engineer is given the duty of supervision of the county construction and maintenance of roads. When the same individual is employed, not only as supervisor but as a laborer by the county court in connection with the maintenance of the county road system, an apparent conflict of interest arises which the Missouri Supreme Court condemns as improper.

CONCLUSION

From the foregoing, it is clear that there is an incompatibility in the same person holding the office of

Mr. Robert L. Hyder

county highway engineer of a third class county and being employed by the county court as a laborer in connection with the maintenance of the same county road system.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary A. Tatlow.

Yours very truly,


THOMAS F. EAGLETON
Attorney General