

LAND SURVEYORS: 1. Only a person duly registered  
COUNTY SUPVEYOR: as a land surveyor under Chapter  
DEPUTY COUNTY SURVEYOR: 327, RSMo 1969, is qualified to  
be elected to the office of county  
surveyor. 2. County surveyors who were qualified for the office  
when elected continue to hold the office for the remainder of their  
terms. 3. County surveyors have authority to appoint a duly regis-  
tered land surveyor as a deputy to perform work as a land surveyor.  
4. The state land surveyor may in his discretion require land sur-  
veys to be made by a local registered land surveyor when no regis-  
tered county surveyor exists. 5. The only compensation the county  
surveyor in third and fourth class counties is entitled to receive  
for his services, whether the work is performed by him or his dep-  
uty, is the compensation provided by statute for the county sur-  
veyor. Any compensation to the deputy for his services must come  
from the county surveyor.

OPINION NO. 96

May 23, 1972

Mr. Robert E. Myers  
State Land Surveyor  
State Land Survey Authority  
P. O. Box 1158  
Rolla, Missouri 65401



Dear Mr. Myers:

This is in response to your request for an opinion from this office in part as follows:

"The Attorney General's Opinion Number 405, November 15, 1971 stated that 'a duly elected county surveyor cannot practice as a land surveyor in this state as defined in Section 327.272, RSMo 1969, unless he has been duly registered as a land surveyor under Chapter 327, RSMo 1969'. Section 60.010 RSMo 1969 states, 'the qualified voters of each county of this state in classes two, three and four shall elect some suitable person as a county surveyor'. Does the qualification 'some suitable person' now mean a land surveyor registered under provisions of Chapter 327, RSMo 1969?"

"In the event that the elected county surveyor is not registered as a land surveyor under Chapter 327, RSMo 1969 may the county surveyor appoint a Deputy that is registered as

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a land surveyor in order to practice land surveying?

"The duties of the State Land Surveyor are given in Section 60.530, RSMo 1969 which states that 'he shall, whenever practical, cause all land surveys, except geodetic surveys, to be executed, under his direction by the registered county surveyor or a local registered land surveyor when no registered county surveyor exists.'

"In the case of the unregistered county surveyor and registered deputy county surveyor is the State Land Surveyor bound to cause all land surveys to be executed by the deputy as if he were the 'registered county surveyor' called for by statute. Also does the county surveyor statutory fee schedule apply to said deputy." (Underscoring theirs)

You further state that in 1972 there are seventy-one county surveyors in Missouri. Fifteen of these surveyors are not now registered land surveyors according to Chapter 327, RSMo 1969. You further state that at present several of these non-registered county surveyors have appointed a deputy county surveyor who is a registered land surveyor and who actually surveys and signs and seals all such surveys for the county surveyor. You further state that all county surveyors are to be elected this year and you want to know whether a person who is not a duly registered land surveyor in the State of Missouri is qualified to be elected to the office as county surveyor.

Section 60.010, RSMo 1969, provides for the election of a county surveyor in class two, three and four counties, as follows:

"At the regular general election in the year 1948, and every four years thereafter, the qualified voters of each county of this state in classes two, three and four shall elect some suitable person as county surveyor, who shall hold his office for four years and until his successor is duly elected, commissioned and qualified."

On November 15, 1971, in Opinion No. 405, this office ruled that a duly elected county surveyor cannot practice as a land surveyor in this state unless he has been duly registered as a land surveyor under Chapter 327, RSMo.

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We shall consider your questions in the order as submitted.

Section 60.010, RSMo, provides for the election of a "suitable person" as county surveyor. The question is who is a suitable person to be elected county surveyor under this statute.

It is our view the term "suitable person" as used in this statute as applied to the qualifications for public office should be considered in the sense of being fully capable of adequately rendering all the services, fitness or capability of performing the duties of the office. 67 C.J.S., Officers, paragraph 11. The term "suitable person" is defined in Words and Phrases, Volume 40A as a proper and competent person.

In regard to the duties of the county surveyor, Section 60.120, RSMo 1969, provides that the county surveyor shall, within ten days, when called upon, survey any tract of land or town lot lying within his county at the expense of the person demanding the same. Section 60.170, RSMo 1969, requires the county surveyor to execute all orders from a court of record for surveying any tract of land the title to which is in dispute before such court. Section 60.150, RSMo 1969, provides no surveys or resurvey made by any person except that of the county surveyor shall be considered as legal evidence in any court of this state, except such surveys as are made by the authority of the United States or by mutual consent of the parties.

Considering these duties as required by statute of a county surveyor, it is our view that unless the person is capable of performing these duties such person is not qualified for such office and, therefore, is not qualified or eligible to be elected as a county surveyor in class two, three and four counties in this state at the present time.

The question arises about the status of county surveyors who were elected to office prior to the enactment of Section 327.272, RSMo 1969, which provides that no duly elected county surveyor shall practice as a land surveyor in this state unless duly registered as a land surveyor in this state. This statute was enacted in 1969.

It is our view that a duly elected county surveyor elected to office prior to 1969, who was qualified at that time for the office of county surveyor, continues to legally hold the office during the remainder of his term.

The general principles of law concerning a vacancy in public office and when it occurs is stated in 67 C.J.S., Officers, paragraph 50 in part as follows:

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". . . The law abhors vacancies in public offices, and courts generally indulge in a strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming, for any period of time, wholly vacant and unoccupied by one lawfully authorized to exercise its functions. . . ."

In State ex inf. Lamkin ex rel. Harrison v. Tennyson, 151 S.W. 2d 1090 (Mo. banc 1941) involved a quo warranto proceeding to determine the right of a county recorder to hold the office of recorder when a change in population resulted in separating the office of circuit clerk-recorder. In holding the circuit clerk-recorder continued to hold both offices until the next election, the court stated, l.c. 1091:

"In this connection it should be noted that the courts indulge a strong presumption against a legislative intent to create a condition that might result in a vacancy in public office. . . ."

In State ex inf. McKittrick v. Wilson, 166 S.W.2d 499 (Mo. banc 1942), the Supreme Court in quo warranto proceedings had before it the question of whether the circuit clerk had forfeited his office while in the United States Army on the theory that he was unable to devote his time to the office and as a result had forfeited the office. In discussing this question, the court stated, l.c. 501:

". . . Verily a public office is held on the implied condition that the officer will perform the duties belonging to it. However, Mechem in his work on Public Officers points out that generally it is a willful refusal to perform the duties of an office which works a forfeiture so that a judgment of ouster is necessary. The statutes of some states specifically require such a judgment."

It is our view that county surveyors who were qualified for the office of county surveyor when elected qualify to remain in office during the remainder of the term. That it was not the intention of the legislature, when it enacted the statute requiring county surveyors to be registered land surveyors in order to perform the duties of land surveying, to create a vacancy in the office of county surveyor or to create a condition that would result in a forfeiture of the office. As hereinafter discussed, it is

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our view that they may appoint deputy surveyors who are qualified to perform the functions and it is not necessary for the office to be considered vacant.

You inquire about the authority of the county surveyor to appoint a duly registered land surveyor in this state as a deputy to perform the duties of the county surveyor in making surveys and to sign and seal all such surveys.

Section 60.090, RSMo 1969, provides:

"Deputies may be appointed by any surveyor who, before they proceed to discharge their duties, shall take an oath well, truly and faithfully to discharge the duties of deputy surveyors."

General principles of law concerning the powers and authority of deputy public officers is stated in 67 C.J.S., Officers, paragraph 151 in part as follows:

"Without statutory authority, deputies or subordinate officials have no power with respect to the duties of an office involving the exercise of judgment and discretion; nor may they, as a rule, without such authority, perform judicial or quasi-judicial duties conferred on their principals, and a deputy may not himself make or appoint a deputy. However, as a general rule under the statutes, a legally appointed deputy possesses the same powers as the officer whom he represents and may usually do every act which his principal may do, so that all ministerial duties pertaining to the office which the principal could perform may be performed by a deputy. When the law authorizes an officer to appoint a deputy without any express limitation on his power, the duties of the office may be performed by either, and a deputy may exercise any of the duties pertaining to the office, as the necessity of convenience of the public may demand their use, and this power may not be curtailed by the principal, unless the law expressly authorizes him to do so." (emphasis supplied)

We believe this principle of law should be and is followed in this state. *Small v. Field*, 102 Mo. 104 (1890); *State v. Carey*,

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318 Mo. 813 (1927). It is our view that a county surveyor may appoint a deputy who is duly registered as a land surveyor and otherwise qualified to perform the work as a surveyor and perform the duties of the county surveyor in the same manner as they are to be performed by the county surveyor.

Section 327.361, RSMo 1969, prohibits the filing or recording of certain documents not sealed and signed by a registered land surveyor. It provides as follows:

"1. It shall be unlawful for the recorder of deeds of any county, or the clerk of any city or town, or the clerk or other proper officer of any school, road, drainage, or levee district or other civil subdivision of this state, to file or record any map, plat, or survey which does not have impressed thereon, and affixed thereto, the personal seal and signature of the registered land surveyor by whom or under whose authority and supervision the map, plat or survey was prepared.

"2. Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by confinement in the county jail for not less than thirty nor more than sixty days or by both such fine and confinement."

Under this statute for a map, plat or survey to be filed or recorded, it must have impressed thereon, and affixed thereto, the personal seal and signature of the registered land surveyor by whom or under whose authority and supervision the map, plat or survey was prepared. It does not prohibit the county surveyor from also signing the document or instrument. It is our opinion the document or instrument signed by the county surveyor, together with the seal and signature of the registered land surveyor who prepared or supervised the preparation of the document or instrument, complies with the provision of this statute and such document or instrument may be filed and recorded.

You refer to Section 60.530, RSMo 1969, which states that the state land surveyor ". . . shall, whenever practical, cause all land surveys, except geodetic surveys, to be executed, under his direction by the registered county surveyor or a local registered land surveyor when no registered county surveyor exists. . . ." and

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inquire whether the state land surveyor is bound to cause all land surveys to be executed by the deputy as if he were the registered county surveyor.

Section 60.530, RSMo, provides:

"The state land surveyor shall, under guidance of the authority, carry out the routine functions and duties of the authority, as prescribed in sections 60.500 to 60.610. He shall, whenever practical, cause all land surveys, except geodetic surveys, to be executed, under his direction by the registered county surveyor or a local registered land surveyor when no registered county surveyor exists. He shall perform such other work and acts as shall, in the judgment of the authority, be necessary and proper to carry out the objectives of sections 60.500 to 60.610 and, within the limits of appropriations made therefor and subject to the approval of the authority, employ and fix the compensation of such additional employees as may be necessary to carry out the provisions of sections 60.500 to 60.610." (emphasis added)

The above section provides that the state land surveyor shall, whenever practical, cause all land surveys, except geodetic surveys, be executed under his direction by the registered county surveyor or a local registered land surveyor when no registered county surveyor exists. It is our view under this statute it is a matter of discretion for the state land surveyor to determine when it is practical to have a local registered land surveyor do the work when no registered county surveyor exists. As heretofore stated, it is our view that a duly registered deputy land surveyor has authority to perform the duties of the county surveyor. This is true whether the county surveyor is or is not a registered land surveyor. When the county surveyor is not a registered land surveyor and does not have a deputy who is a registered land surveyor, the state land surveyor has authority under this statute to require a local registered land surveyor to perform the services.

You also inquire whether the statutory fee schedule that applies to the county surveyor applies to his deputy. Section 60.100, RSMo 1969, provides that in counties of the second class, the county surveyor may charge for his services such sum as may be agreed upon by such surveyor and the person employing him.

Section 60.110, RSMo 1969, provides that county surveyors in counties of the third and fourth class shall be allowed fees for

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their services, which statutes set out a schedule of fees for the services of the county surveyor.

The county surveyor is a public official. When a statute provides compensation to a public official in a particular mode or manner, the officer is confined to such manner and is entitled to no other or further compensation or to any different mode of requiring it. Public policy requires that a public officer be denied additional compensation for performing official duties. *Nodaway County v. Kidder*, 344 Mo. 795, 129 S.W.2d 857 (1939).

It is our opinion that county surveyors in counties of the third and fourth class are entitled to receive only fees as provided in Section 60.110, RSMo, for the performance of their services. That the county surveyor is entitled to the fees for the work performed by the deputies. That the deputy is not entitled to charge these fees but his compensation depends upon the terms of his employment by the county surveyor in class three and four counties to be paid by the county surveyor.

#### CONCLUSION

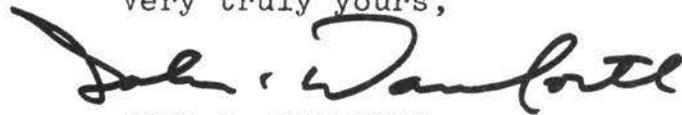
It is the opinion of this office that:

1. Only a person duly registered as a land surveyor under Chapter 327, RSMo 1969, is qualified to be elected to the office of county surveyor.
2. County surveyors who were qualified for the office when elected continue to hold the office for the remainder of their terms.
3. County surveyors have authority to appoint a duly registered land surveyor as a deputy to perform work as a land surveyor.
4. The state land surveyor may in his discretion require land surveys to be made by a local registered land surveyor when no registered county surveyor exists.
5. The only compensation the county surveyor in third and fourth class counties is entitled to receive for his services, whether the work is performed by him or his deputy, is the compensation provided by statute for the county surveyor. Any compensation to the deputy for his services must come from the county surveyor.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH  
Attorney General