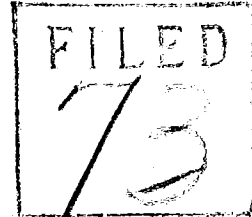


HIGHWAY ENGINEERS - County Highway Engineers not entitled to mileage in counties of twenty thousand to fifty thousand.

January 30, 1941



Hon. W. Oliver Rasch
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of January 2, 1941, as follows:

"By virtue of Laws 1939, page 674, the County Surveyor becomes the Highway Engineer of this county, and his salary as highway engineer shall be not less than twelve hundred dollars per annum, nor more than two thousand dollars per annum as shall be determined by the County Court.

"Is the highway engineer entitled to receive expenses, such as mileage, in addition to the salary determined by the County Court?"

Section 8011 as found in Laws of 1939, P. 674, is in part as follows:

"The county court of the several counties in this state may, in their discretion, appoint the county surveyor of their respective counties to the office of county highway engineer, provided he be thoroughly qualified and competent, as required by this article; and when so appointed, he shall receive the compensation fixed by the county court, as provided in section 8008, in lieu of all fees, except such fees as are allowed by law for his services as county surveyor: * * * * *

Provided, further, after January 1, 1941, that in all counties in the state which contain, or which may hereafter contain not less than twenty thousand inhabitants or more than fifty thousand inhabitants the county surveyor shall be ex-officio county highway engineer, and his salary as county highway engineer shall not be less than twelve hundred dollars per annum, nor more than two thousand dollars per annum as shall be determined by the County Court."

An examination of Article 8, Chapter 42, R. S. Missouri, 1929, as amended by Section 8011, passed by the Sixtieth General Assembly, which article pertains to the office of county highway engineer, fails to disclose any statute or provision authorizing the

payment of mileage to a county engineer lawfully engaged in the discharge of his duties.

The courts of this State have consistently required an officer seeking compensation from the public treasury to point out the authority for the payment of such compensation. This rule may be illustrated by the two following cases: In *King v. Riverland Levee Dist.*, 279 S. W. 195, we find the rule set out as follows: (l. c. 196)

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. State ex rel. *Evans v. Gordon*, 245 Mo. 12 loc. cit. 27, 149 S. W. 638; *Sanderson v. Pike County*, 195 Mo. 598, 93 S. W. 942; State ex rel. *Troll v. Brown*, 146 Mo. 401, 47 S. W. 504. Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. *Wedeking v. McCracken*, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled

to no other or further compensation, or to any different mode of securing the same. State ex rel. Evans v. Gordon, supra."

More recently the Supreme Court has affirmed the above principle in Nodaway County v. Kidder, 129 S. W. (2d) 857, 344 Mo. 795, l. c. 801, where it is stated as follows:

"The compensation of a judge of the county court, in a county having less than 75,000 inhabitants is fixed at \$5 per day for each day necessarily engaged in holding court, plus five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court, and such mileage shall be charged only once for each regular term. (Sec. 2092, R. S. 1929 (Mo. Stat. Ann., sec. 2092, p. 2664), as amended Laws of Mo. 1931, pp. 190-191.) In addition a judge of the county court is allowed \$5 per day for each day he sits as a member of the board of equalization and board of appeals. (Sec. 9818, R. S. 1929 (Mo. Stat. Ann., sec. 9818, p. 7915).)

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of

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securing same. Such statutes, too must be strictly construed as against the officer. (State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel Wedeking v. McCracken, 60 Mo. App. 650, 656.)

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. (State ex rel. Euder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645.)"

CONCLUSION.

In view of the foregoing, it is the conclusion of this Department that a county surveyor becoming the ex-officio county highway engineer by virtue of Section 8011, as amended in Laws of 1939, P. 674, in counties of not less than twenty thousand nor more than fifty thousand inhabitants is not entitled to any fees for mileage incurred in discharging his duties as such county highway engineer.

APPROVED:

Respectfully submitted,

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