

COUNTY COURTS: May employ and dismiss assistants under Section
8020, R. S. Mo. 1929.

January 21, 1937

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Mr. Guy Wood,
Clerk of the County Court,
DeKalb County,
Maysville, Missouri.

Dear Sir:

This department is in receipt of your request for
an opinion under date of January 12, 1937, wherein you state
as follows:

"The County Court of DeKalb County has
requested an opinion from the Attorney
General's office in the following mat-
ter. Does the County Court have the
authority to employ all of the men who
work on the construction of county
bridges?"

"This question has arisen in this county
by the attempt of the County Court to
select the men who are to work under
the supervision of the County Highway
Engineer. The County Highway Engineer
contends that he has the authority to
select and employ these men as well as
dismiss them if their work is not
satisfactory.

"The Court takes the position that they
have the authority to select and dismiss
these workers. However, they have agreed
to abide by the decision of the Attorney
General as to who has the authority to
employ these workers."

Section 8019, R. S. of Mo. 1929, provides the manner in which the county may dispose of the county highway engineer law, and we are informed that the County of DeKalb has availed itself of this section and voted out the county highway engineer law.

Section 8020, R. S. of Mo. 1929, provides as follows:

"In all counties in this state that may vote against the county highway engineer law in the manner prescribed in section 8019 of this article, all matters relating to roads and highways and the expenditures of the public funds thereon shall be governed by the laws then in force in such counties, except that part of the law pertaining to the appointment of the county highway engineer. In all counties wherein the services of a county highway engineer are dispensed with, as provided by section 8019 of this article, the county surveyor shall be ex officio county highway engineer, and, as such, shall perform such services pertaining to the working, improvement, repairing and maintenance of the roads and highways, and the building of bridges and culverts as provided by this article to be done and performed by the county highway engineer, or as may be ordered by the county court; and for his services as ex officio county highway engineer he shall receive such compensation as may be allowed by the county court, of not less than three dollars nor more than five dollars for each day he may be actually employed or engaged as such county highway engineer. The county court may empower the county highway engineer, or the county surveyor when acting as county highway engineer, to employ such assistants as may be deemed necessary to carry out the court's orders and at such compensation as may be fixed by the court, not to exceed the sum of four dollars per day for deputy county highway engineer nor more than three dollars per day for each other assistant for each day they may be actually employed."

The construction of the highway engineer law as pertains to those counties where the highway engineer is abolished and the surveyor becomes ex-officio county highway engineer (and we understand DeKalb County has abolished same) was before the appellate court in *Spurlock v. Wallace et al.*, 204 Mo. App. 674, where the court said:

"The first road and highway law of Missouri that we find, governing counties such as Douglas, for a county highway engineer, appears in Session Acts of 1907, page 401. Under this act there was no election given to the people to determine for themselves whether there would be a county highway engineer. This law was amended in the 1909 act, which did give the people of the county the right to determine for themselves whether such an officer was desired. The Law of 1907 provided that the compensation for a highway engineer would be not less than \$300, nor more than \$2000, per year, while the Amendment of 1909, under section 10572, permits the county court to make a per diem charge.

"If the contention made by appellant should be upheld, then we must necessarily hold that to vote under section 10571, and to thereunder abolish the highway engineer act, meant simply a change of the manner and amount of compensation to be paid to the party acting as highway engineer, as the appellant is contending that he is duty bound to perform exactly the same service that the highway engineer would have performed even though the people have voted out this law. We cannot lend sanction to this narrow construction, as it would appear that the purpose of sections 10571 and 10572, Revised Statutes 1909, was to permit the people of a county to abolish the office of highway engineer yet to leave it possible for the surveyor to perform the duties that the highway engineer would have performed had the law not been voted out, provided he acted under the orders and direction of the county court. The general intent of section 10571 was to permit the people of a

county to vote out a highway engineer and to abolish the duties of such engineer, and that more was intended by said section than to merely give them the right to change the form and amount of compensation.

* * * * *

"The duties required of a highway engineer by section 10556, Revised Statutes 1909, are by the very terms of section 10571, when the people have voted against the highway engineer act, abolished, and the county court may, under section 10481, Revised Statutes 1909, order warrants drawn to road-overseers. The provision in the last section, that the construction of bridges and culverts shall be under the direction and supervision of the county highway engineer, is by the terms of section 10571 dispensed with when the people vote against the act."

In an opinion rendered by this department under date of July 30, 1935, to Hon. James H. Pettijohn, Prosecuting Attorney, Oregon, Missouri, a copy of which is enclosed, it is held that where the county highway engineer law is no longer effective in a county, the county surveyor as ex-officio county highway engineer "performs his duties under the orders and directions of the county court."

The question then arises whether such authority also vests the county court with the power to employ the men who are to aid and assist the engineer in his duties.

Although there has been no decision in this state defining or interpreting the word "assistants" as used in the above statute, we find the following definition in Corpus Juris, Vol. 5, at page 1327:

"Assistant - One who helps, aids or assists; one who stands by and helps or aids another. The word is susceptible of considerable variety of meaning, to be made definite in each case by the aid of the context, the circumstances, and other materials of interpretation. It has been held to include an agent, or servant, and a deputy."

The above definition would indicate that the county court may empower the county highway engineer to employ such persons as may be deemed necessary to aid, help and assist him in fulfilling his duties under the statutes, which includes that of building bridges.

In DeKalb County the county surveyor is acting as county highway engineer, and the county court may empower him to employ such assistants as may be deemed necessary to carry out the court's orders, and at such compensation as may be fixed by the court.

Is the word "may" as used in Section 8020, supra, to be construed as mandatory upon the county court to empower the county highway engineer to employ assistants, or is it merely directory upon the court, so that in its discretion it may withhold such power to itself?

In the case of State ex rel. v. Blair, 245 Mo. 680, l. c. 693, the court in construing the term "may", said:

"The word 'may' is sometimes construed as mandatory, but more frequently otherwise."

And in the case of In re Bank of Mt. Moriah v. Mt. Moriah, 226 Mo. App. 1230, l. c. 1231, the court in holding that where the statute merely requires certain things to be done but nowhere prescribes the result that shall follow if such things are not done, such statute should be construed as directory and not mandatory, said:

"If a statute merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. The rule thus stated is in harmony with that other well-recognized canon that statutes directing the mode of proceedings by public officers are to be held to be directory and are not to be regarded as essential to the validity of a proceeding unless it be so declared by law. (State v. Cook, 14 Barb. 259.) By this we mean that if a fair consideration of the statute shows that unless the Legislature intended compliance with the proviso to be essential to the validity of the pro-

ceeding, which nowhere appears, then it is to be regarded as merely directory.' (State ex inf. Frank W. McAllister v. Bird et al., 295 Mo. 344, 351, 352.)"

It is to be noted that the statute doesn't prescribe the result to follow if the county court doesn't empower the county highway engineer with the power to employ such assistants, and we are therefore of the opinion that the word "may" as used in Section 8020, supra, is merely directory, and that the county court may reserve such power to itself.

It is therefore our opinion that the county court may empower the county surveyor, when acting as county highway engineer, to employ the necessary assistants to carry out the court's orders, at such compensation as may be fixed by the county court, or it may reserve that power unto itself to select and dismiss the employees who are to work under the supervision of the county highway engineer.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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