

LEGISLATURE AND
STATUTES:

Construction placed on proposed House Bill.

March 10, 1953



Honorable Ealum E. Bruffett
Member, House of Representatives
67th General Assembly
Capitol Building
Jefferson City, Missouri

Dear Mr. Bruffett:

This will acknowledge receipt of your request for an opinion which reads:

"I am sending you a copy of a bill which I hope to introduce. My question concerns sub-section 2, which I have enclosed in parenthesis. I am wondering if this section as written would force the surveyor to be an engineer from engineering school or would it permit him to hold this office if he had learned by experience or other means except engineering school.

"Your opinion on this matter will be very much appreciated."

The proposed bill in question repeals Sections 60.010, 61.160, 61.170, 61.180 and 61.200, RSMo 1949, and enacts in lieu thereof one new section relating to the same subject matter. The new section, namely 60.010, reads:

"1. At the regular general election in the year 1954 and every four years thereafter, the qualified voters of each county in classes two, three, and four shall elect a county surveyor who shall also serve as ex officio highway engineer, who shall hold his office for a term of four years and until his successor is duly elected and qualified.

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"2. The county surveyor and ex officio highway engineer shall be skilled in the laying of drains, in bridge, culvert and road building and general road work, and he shall have a practical knowledge of civil engineering."

We do not find any decisions construing such provisions contained under sub-section 2 of Section 60.010 of the proposed bill.

The present bills regarding qualifications for county highway engineers under first class counties provide that he should be not only skilled and experienced in general road, bridge and culvert work but must also be authorized to practice engineering under the laws of this state providing for and requiring the registration of professional engineers. (See Section 61.030, RSMo 1949.) However, this is not true as to highway engineers for class two, three and four counties. That law relating to qualifications of such engineers provides that they should be skilled in laying of drains, in bridge, culvert and road building and general road work and should also have a practical knowledge of civil engineering. (See Section 61.170, RSMo 1949).

One of the primary rules of construction of statutes is to ascertain the lawmaker's intent, from the words used if possible, and to put upon the statutory language, honestly and faithfully, its plain and rational meaning and to promote its object. (See *Haynes v. Unemployment Compensation Commission*, 183 S.W. (2d) 77, 353 Mo. 540.)

While this of itself is not conclusive, it does, at least to some extent, indicate the legislative intent in enacting the foregoing provisions, which was that the county highway engineer in class one counties should be a registered engineer and in class two, three and four counties said county highway engineer need not be a registered engineer but shall have some practical knowledge of civil engineering.

At the present time there is no law requiring one to qualify for county surveyor in class two, three and four counties to be a registered engineer but only that he must be a suitable person. (See Section 60.010, RSMo 1949.)

This proposed bill combines the two offices, that of county surveyor and county highway engineer in counties of the second, third and fourth classes. The word "skill" as a limitation of expert evidence must be regarded in its broadest sense. In

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Nesbitt v. City of Butte, 163 P. (2d) 251, 255, 188 Mont. 84, objections were raised that a witness was not shown to be qualified to give opinion evidence under Section 10531 of the Revised Code 1935, under which a witness may give his opinion on a question of science, art or trade when he is skilled therein. The court held that said witness was qualified notwithstanding most of his experience and skill was a result of actual experience and not education, he having only studied some little engineering at home, in so holding the court said:

"We think that Hardy was shown to be sufficiently qualified by training and experience to permit the reception of his opinion testimony as a skilled witness; and further, that he was shown to have sufficient knowledge of the facts, gained by personal observation, to enable him to form an opinion entitled to be considered by the jury.

"According to definition, as found in 32 C.J.S., Evidence, Sec. 456, p. 94, a skilled witness is one 'possessing, with regard to a particular subject or department of human activity, knowledge and experience which are not acquired by ordinary persons. [Irion v. Hyde, 110 Mont. 570, 105 P. 2d 666.] * * * [He] may be qualified by professional, scientific, or technical training, or by practical experience in some field of activity conferring on him special knowledge not shared by mankind in general, the rule in this respect being that one who has been engaged for a reasonable time in a particular profession, trade, or calling will be assumed to have the ordinary knowledge common to persons so engaged.' A witness qualified by observation may state the cost of doing certain work. 32 C.J.S., Evidence, Sec. 503, p. 164."

(Underscoring ours.)

(See also Schwantes v. State, 106 N.W. 237, loc. cit. 247, 127 Wis. 160.)

"Practical" as defined by Webster's New International Dictionary, 2nd Edition, reads in part as follows: * * * "3(a) Engaged in some practice; working; as, a practical farmer. (b) Active, busy. (c) Practiced; having experience. 4. Given or disposed to action as opposed to speculation, etc.; skillful or experienced from practice; evincing practice or skill; capable of applying knowledge to some useful end; as a practical mind; a practical electrician."

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The court in Lamons v. Yarbrough, 55 S.E. (2d) 551, loc. cit. 556, said: "The word 'practical' is defined by Webster as capable of applying knowledge of theory to practice." In John Hancock Mutual Life Insurance Company v. Scroder, 180 S.W. 327, loc. cit. 331, 235 Ala. 653, the court held that a charge that if injured lost substantial use of both feet for the purpose that people commonly and ordinarily use their feet, the insured lost use of both feet within the meaning of the policy, was correct, since words "substantial use" means "practical use." This would indicate that all that was necessary under your proposed bill would be that said official have some skill or ability in laying of drains also in bridge, culvert and road building work and substantial knowledge of civil engineering and that he need not actually be a graduate engineer from some engineering school or a registered engineer in this state.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the enclosed proposed bill as written does not require the surveyor in second, third and fourth class counties to be a graduate engineer but that he may qualify if he has practical knowledge of civil engineering which knowledge may be gained by actual experience or any other method.

This opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General