

COUNTY SURVEYOR: County Surveyor when ex-officio county highway engineer has only the powers that the county court confers upon him by direction.

8-27
July 30, 1935.



Hon. James H. Pettijohn,
Prosecuting Attorney,
Oregon, Missouri.

Dear Sir:

This department is in receipt of your letter of July 2 wherein you make the following request:

"There is some question in our county concerning the power and duties of the Ex-officio Highway Engineer. The County Engineer Law was rejected by the vote of the people in 1912. The question on which we desire opinion is whether, under the present status, the Ex-officio Engineer has control of all county roads and maintenance equipment or is he merely working for the county court and performing such duties as he is called upon to perform by the court?"

It is noted that Holt County rejected what is termed under Section 8019 as the County Highway Engineer Law.

Under Section 8013, R.S. Mo. 1929 the duties of the county highway engineer are set forth and are as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until

said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

Section 8020, R.S. Mo. 1929 sets forth the manner in which the county highway engineer's duties are to be performed in the event the county dispenses with the county highway engineer law, and 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."

You will note in the above quoted section the following sentence: " 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 * * * as provided by this article to be done and performed by the county highway engineer, or as may be ordered by the county court; " From the above section it would appear that when the county dispenses with the county highway engineer the county surveyor would automatically assume his duties and have identical powers but for an interpretation of the various statutes governing the same; as to the exact status of the county surveyor, ex-officio county highway engineer, you are referred to the case of *Spurlock v. Wallace, et al*, 204 Mo. App. 1.c. 676, wherein the Court said:

"To get appellant's issue more narrowly stated, he claims that by virtue of his office as ex-officio engineer, the county court shall not draw warrants to road-overseers until the claims therefor shall have been examined and approved by him, as provided under section 10558, Revised Statutes 1909.

"The real issue in the case comes up on the question of the employment of the appellant and the right he has to draw the emoluments of the office; the county court contending that he has no duty to perform until they

order him to perform it; and that he shall then receive the amount which has been provided by them in the order made; the appellant contending that he has certain duties to perform for which he would be entitled to compensation regardless of an order or request of the county court for him to act.

"Section 10572, Revised Statutes 1909, is somewhat ambiguous, as it provides for an ex-officio county highway engineer and defines certain duties as therein specifically set out 'or as may be ordered by the appellate court. Reading this section by itself; it would appear that there is some reason for appellant's contention, but when the whole section is read in connection with other sections relating to roads, and highways, we are inclined to the construction placed upon the law by the trial judge. It appears that the road, highway and bridge laws were amended in 1909, practically setting up a new system, running through which were certain duties provided for a county highway engineer. It was provided, however, in section 10571 that if a majority of those voting on the proposition at such election voted against the county highway act, then this article and the provision of the law relating to the appointment and duties of a county highway engineer shall not be enforced in such county. Douglas County had voted against the highway engineer act, therefore any duties of a county highway engineer were dispensed with. In Section 10572, Revised Statutes 1909, it is provided that all matters relating to roads and highways, and the expenditure of 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. The latter part of this section also throws light, as it provides that the county court may empower the county highway engineer or county surveyor to employ

such assistance as may be deemed necessary 'to carry out the court's orders'.

"The first road and highway law of Missouri that we find, governing such counties 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 \$2,000, 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."

CONCLUSION

In view of the above decision, we are of the opinion that the county surveyor ex-officio highway engineer has control of all county roads and maintenance equipment and performs his duties under the orders and direction of the county court, and does not have the power that is conferred upon the county highway engineer if the County Highway Engineer Law is not effective in a county.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General

OWN:AH