

COURT

APPROVAL
ENGINEER

The duly elected or appointed surveyor of Henry County is ex officio county highway engineer until January 1, 1949. County court is vested with the power to employ road and bridge foremen and other employees; highway engineer selects his assistants, subject to approval by the county court.

August 27, 1947

FILED

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Honorable W. K. Journey
Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Sir:

This is in reply to your letter of July 28, 1947, wherein you request an opinion of this department relative to a question involving your county highway engineer. Said letter reads, in part, as follows:

"Henry County, Missouri, a county in class three, and one where highway engineer is dispensed with, under the provisions of section 8658, Mo. R.S., and being governed by section 8659 which provides that the county surveyor shall be ex-officio county highway engineer and among other things that the county surveyor, when acting as county highway engineer, to employ such assistants as may be deemed necessary by the court's orders.

"The 53rd General Assembly passed H.C.S. for H.B. 792 which repeals section 8658, but provides that in section 8659, Laws of Missouri, 1945, that the acts shall be and become effective January 1, 1948; Provided that any part of this section which may be necessary to remove any inconsistency with the Constitution of this State shall be and become effective July 1, 1946.

"Question 1. Is the duly elected or appointed surveyor of Henry County, Missouri the ex officio county highway engineer of

Henry County, Missouri until January 1, 1949?

"Question 2. Does the county highway engineer have the power to select and designate the road and bridge foremen and other employees that may be necessary to carry out the county court's orders, or is this power vested in the county court?"

Section 8668, R.S. Mo. 1939, provides that by a vote of the people of any county the provisions of the article relating to county highway engineer may be suspended, and in such event the provisions of the law relating to the appointment and duties of a county highway engineer shall not be enforced in such county.

According to the letter of request, Henry County did so vote, under the provisions of said Section 8668, to suspend the provisions of the law relating to county highway engineer. Section 8669, R.S. Mo. 1939, would then apply to said county, the pertinent part of which section reads as follows:

"In all counties in this state that may vote against the county highway engineer law in the manner prescribed in section 8668 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 8668 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.

* * * *

From the above, we see that in accordance with Section 8669 the surveyor of Henry County is ex officio county highway engineer.

House Committee Substitute for House Bill No. 792, Laws of Missouri 1945, page 1493, passed by the 63rd General Assembly, repealed, among others, Sections 8668 and 8669, R.S. Mo. 1939. But it is to be noted that Section 8659 of said House Bill No. 792 says:

"The provisions of this act shall be and become effective January 1, 1949: Provided that any part of this act which shall be necessary to remove any inconsistency with the constitution of this state shall be and become effective July 1, 1946."

It might be contended that the repeal of certain of those enumerated sections is necessary to remove an inconsistency with the Constitution, but we do not agree with such contention. We feel that a true picture of the legislative intent in this and two companion bills may be better obtained by a brief review of these three bills passed by the 63rd General Assembly.

House Bill No. 792 repealed certain sections of the 1939 Revised Statutes relating to the office, appointment and duties of the county highway engineer. Said bill provides that the county courts in counties of the second, third and fourth class have authority to appoint a highway engineer and that the county court may appoint a county surveyor as highway engineer. As we have above indicated, Section 8659 provides that "the provisions of this act shall be and become effective January 1, 1949."

House Bill No. 793, found at page 1759 in Laws of Missouri 1945, repealed Section 13190, R.S. Mo. 1939, which

provided for the election of a surveyor in every county in this State at the November election in 1868, and every four years thereafter. Said House Bill No. 793 provided in lieu thereof for the election of a surveyor in counties of the second, third and fourth class in the year 1948, and every four years thereafter.

House Bill No. 794 is to be found in Laws of Missouri 1945, page 1400. Section 1 thereof says:

"In all counties of class one in this state there is hereby created the office of county highway engineer and surveyor, to be known and designated as highway engineer, who shall be the chief officer in such county in all matters pertaining to highways, roads, bridges, culverts and surveys. At the general election in the year 1948, and every four years thereafter, the qualified voters of each such county shall elect a highway engineer, who shall hold his office for four years and until his successor is elected, commissioned and qualified."

The remaining sections of said bill set out the duties of the county highway engineer in class one counties.

From a reading of these three bills it is quite obvious to see that the Legislature intended to, and we believe did, revise and rewrite the provisions affecting surveyors and county highway engineers as those offices relate to every county in this State. The three bills fit together to form a complete pattern for the offices of county surveyor and highway engineer which begin with the election in 1948, the offices to be taken January 1, 1949. The terms of the present surveyors, elected in 1944, are to continue unaffected for the remainder of their present terms. Such an interpretation and consideration of the three bills is the application of a principle of statutory construction, well recognized by the courts of this State. In *Grimes v. Reynolds*, 94 Mo. App. 576, the St. Louis Court of Appeals said at l.c. 584:

"Another principle of interpretation which must be closely adhered to is to consider all the statutes treating of the same subject-matter so that the meaning of any particular provision may be enlightened by a view of the general purpose pervading the entire law of the subject."

In *Glaser v. Rothschild*, 221 Mo. 180, it was stated at l.c. 209:

"There is no better settled rule of construction than the one which requires the court to read all acts and statutes relating to the same subject-matter, briefly called statutes in pari materia, and construe them together and gather from all of them the legislative intent. (*Sales v. Barber Asphalt Paving Co.*, 166 Mo. l.c. 677 and 678.)"

We feel the intent of the Legislature was strongly evidenced in the enactment of these three bills. As was stated in the *Reynolds* case, *supra*, at l.c. 584:

"The object of all rational interpretation is to reach the true intent and meaning of the lawmaking authority as expressed in the language it has employed to convey its thought. All other rules are subordinate to that great one."

The above is further strengthened by a reading of Section 13190a of House Bill No. 793, Laws of Missouri 1945, page 1759, which says:

"In all counties of this state the terms of all persons holding the office of county surveyor at the time of the effective date of this act shall not be vacated, or otherwise affected thereby, and all the provisions of law relating to the office of surveyor shall remain in full force and effect for the period of the term of such persons holding the office of county surveyor at the time of the effective date of this act, unless otherwise provided by

law. Otherwise the provisions of this article shall hereafter apply only to counties of Classes 2, 3 and 4."

Section 8, Article VI of the 1945 Constitution, says:

"Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

Section 8659 of House Bill No. 792, Laws of Missouri 1945, page 1493, supra, says that "any part of this act which shall be necessary to remove any inconsistency with the constitution of this state shall be and become effective July 1, 1946." Even if certain parts of this act were needed to remove inconsistencies with the Constitution in accordance with the above-quoted constitutional provision, such would not be true in the case at hand since Henry County elected, under the general provisions of Section 8668, R.S. Mo. 1939 (a provision applicable to all counties), to suspend the "engineer law." In the case of such an election by any county, Section 8669, R.S. Mo. 1939, provides that the county surveyor of such county shall be ex officio county highway engineer.

Your second and final question relates to the selection of road and bridge employees. The pertinent part relating to this question is found in Section 8669, R.S. Mo. 1939, the relevant part of which reads as follows:

" * * * 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."

In an interpretation of such a section we believe the word "may" is to be considered as directory and not mandatory; thus leaving it within the sound discretion of the county court to empower a county highway engineer to employ such assistants as may be deemed necessary. We feel that this above-quoted provision gives to the county court the authority to approve the appointment of assistants to the county highway engineer, and the proper exercise of the discretion given to the county court is to determine the question of whether an assistant is necessary; and it is proper for the county court to decide how many assistants are necessary to carry on the work delegated to the highway engineer. This authority extended to the county court does not extend or give the county court authority to say who shall be employed by the county highway engineer as an assistant. The power of choosing the man or men who are to be assistants to the engineer is vested exclusively in the highway engineer himself, subject to approval by the county court.

The above, of course, is limited to assistants and must be interpreted in light of Section 8595, R.S. Mo. 1939, the pertinent part of which reads as follows:

"Whenever any public money, whether arising from taxation or from bonds heretofore or hereafter issued, is to be expended in the construction, reconstruction or other improvement of any road, or bridge or culvert, the county court, township board or road district commissioners, as the case may be, shall have full power and authority to construct, reconstruct or otherwise improve any road, and to construct any bridge or culvert in such county or other political subdivision of the state, and to that end may contract for such work, or may purchase machinery, employ operators and purchase needed materials and employ necessary help and do such work by day labor. The county court, the township board or road district commissioners may

accept donations of labor or materials from interested parties either on road improvements or bridge constructions and said authority may employ labor or contractors to complete said improvements. * * * Provided, that all such work shall be done under the supervision and direction of the county highway engineer, or some other competent engineer employed by the county court or other proper authority, at such compensation as may be agreed upon, payable wholly or in part out of the particular fund to be expended on said construction, reconstruction or other improvement."

CONCLUSION.

In view of the above, it is the opinion of this department that the intent and purpose of the Legislature was so strongly evidenced by the enactment of House Bills Nos. 792, 793 and 794 by the 63rd General Assembly as to lead to the conclusion that the effective date of House Bill No. 792 is January 1, 1949, as was expressly stated in Section 8659 of said bill. There is also no inconsistency with the Constitution in the laws relating to county highway engineer as they affect Henry County which would necessitate the acceleration of the effective date of House Bill No. 792 from that expressly provided for in the bill, which is January 1, 1949. It would thus follow that the County Surveyor of Henry County, by virtue of Section 8669, R.S. Mo. 1939, is ex officio County Highway Engineer until January 1, 1949. It is further the opinion of this department that the authority is vested in the county court to employ road and bridge foremen and other employees that may be necessary to carry out the county court's orders, except an assistant or assistants to the engineer, which power to choose is vested exclusively in the highway engineer, subject to the approval by the county court.

Respectfully submitted,

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APPROVED:

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