

COUNTY COURTS:
COUNTY ROADS:

In the absence of a county highway engineer and the unavailability of a county surveyor, the county court may appoint any one who is a competent engineer to assist the county court in the formulation of a county road improvement and construction program to be presented to the state highway commission for securing state aid in the improvement and construction of county roads.

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September 10, 1952

Honorable R. M. Gifford
Prosecuting Attorney
Sullivan County
Milan, Missouri

9-11-52

Dear Sir:

Your recent request for an official opinion has been received by this office. You thus state your opinion request:

"The County Court of Sullivan County, Missouri, desires your opinion with reference to the procedure necessary to be followed under the provisions of R. S. Mo. 1949, Sections 231.440 to 231.500 inclusive and specifically Section 231.470 in which is set out the directions as to the use of the County Highway Engineer in the construction of King Bill Roads. Specifically the Court finds itself in the position where the Highway Engineer has resigned, the County Surveyor prefers not to act and they desire to appoint the foreman of the road and bridge crew to act as supervisor of county aid projects if such is permissible."

Section 231.470, RSMo 1949, to which you call attention, reads as follows:

"The county court of each county desiring to avail itself of the benefits of sections 231.440 to 231.500 shall, with the advice and assistance of its county highway engineer, or if none, of its county surveyor, formulate a program for the improvement, construction, reconstruction, or restoration of county roads, as provided for in sections

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231.440 to 231.500, for the period for which funds are appropriated out of the county aid road fund. Such program, together with specific plans, specifications and estimates for each project included in said program, shall be submitted to the state highway commission for approval, within the period for which the funds are appropriated out of the county aid road fund. If such program and the plans, specifications, and estimates for each project submitted, comply with the provisions of sections 231.440 to 231.500 and with the general plans, specifications, and requirements formulated as provided in sections 231.440 to 231.500, the same shall be approved by the state highway commission, and it shall so notify the comptroller who shall thereupon certify his approval of the incurring of obligations for the payment of, and shall encumber and set aside proportionate shares of the funds apportioned to such county in amounts on account of each project included in said program, which amounts shall not exceed fifty per cent of the total cost of such projects and in no event shall exceed the sum of seven hundred and fifty dollars per mile of the county road included in each project. Any funds appropriated out of the county aid road fund shall not be expended for the acquisition of right of ways."

It will be noted that this section provides that the county court of a county desiring to participate in the road program provided for in Section 231.440, RSMo 1949, et seq., may, with the advice of and assistance of its county highway engineer, or if there be no engineer, then its county surveyor, formulate a program consisting of plans, specifications, and estimates for each road project in such county program. Your problem is that you do not have a county engineer and that your county surveyor does not care to act in this capacity, and your county court desires to appoint the foreman of the road and bridge crew to act as supervisor of the county aid projects. Can this be done?

Section 231.470, supra, names only the county highway engineer and the county surveyor in this connection. We cannot believe, however, that this statute is one of absolute limitation in this respect because if it were, it would mean in those cases such as yours, where neither a county highway engineer

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nor a county surveyor were available, there could be no county participation in this road program. Certainly, such was not the intention of the Legislature which enacted Section 231.470, supra.

We direct your attention to Chapter 229, RSMo 1949, which chapter is entitled "Provisions Relating to All Roads," and to paragraph 4 of Section 229.040 of that chapter, which reads:

"On completion of the work a detailed statement of the cost shall be filed as in section 229.050 provided, and shall be recorded in the book wherein are recorded contractors' bids; when any pay rolls or construction accounts are certified to as correct by the engineer in charge of the work, the bills for the same shall be passed upon by the county court, township board or district commissioner, and if found correct, shall be paid; 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."

We believe, therefore, that your county court could designate the road bridge foreman to act in this capacity if he is a competent engineer, as provided by the above quoted section and as is obviously contemplated by Section 231.470, supra. It is obvious from Section 231.470, supra, that it would take a person with a certain amount of engineering ability to render the services which are necessary in order for a county to present its road program to the state. If your county road and bridge foreman does not possess these qualifications, it is our belief that it would be within the province of your county court to employ some individual to do this work who does possess these qualifications.

CONCLUSION

It is the opinion of this department that in the absence of a county highway engineer and the unavailability of a county surveyor, the county court may appoint any one who is a competent

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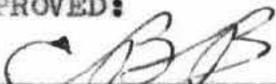
engineer to assist the county court in the formulation of a county road improvement and construction program to be presented to the state highway commission for securing state aid in the improvement and construction of county roads.

Respectfully submitted,

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APPROVED:



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