

COPY to  
J. Smith

COUNTY BOARD OF EQUALIZATION:  
COUNTY JUDGES:  
COUNTY SURVEYOR:

Judges of county court in third class counties entitled to fees for holding court and as members of board of equalization when acting in both capacities on same day; county surveyor in counties of the third class entitled to fee as member of board of equalization, and compensation as county highway engineer, when acting in both capacities on same day.

August 15, 1947



Honorable D. D. Thomas, Jr.  
Prosecuting Attorney  
Carroll County  
Carrollton, Missouri

Attention: Mr. Jack Calvert Jones  
Asst. Prosecuting Attorney

Dear Sir:

This is in reply to your letter of August 6, 1947, requesting an official opinion from this department, which reads as follows:

"According to your opinion under date of July 16, 1946, addressed to W. D. Mayse, the Sheriff is entitled to receive the fee of \$5.00 for serving as a member of the Board of Equalization and that the County Court Judges are entitled to the same fee, but the question has arisen as to whether or not the county court judges are entitled to their fees as county court judges and as members of the board of equalization, when they act as both on the same day.

"The same question has arisen as to the compensation of the County Surveyor. Can he draw the compensation fixed by the County Court as his fee as County Engineer and the fee for serving as a member of the County Board of Equalization, when he acts as both on the same day?

"From the opinion above mentioned, it is evident that the County Clerk is not entitled to compensation for serving as

a member of the Board of Equalization, since he is entirely on a salary basis, but would like to have your opinion on this also."

The opinion referred to in your letter holds that judges of the county court in counties of the third class are entitled, under the provisions of Section 11008, Mo. R.S.A., to certain compensation for each day they act in the performance of their duties as members of the county board of equalization. Said section reads as follows:

"The judges of the county court, the county surveyor, the county assessor, the sheriff, the county clerk, and those sitting as members as may otherwise be provided, shall receive five dollars per day for each day they shall be present and act in the performance of their duties as members of the county board of equalization. Provided, that the above county officers who are now or may hereafter be compensated by salary shall not be entitled to the compensation provided in this section."

The first question presented is whether the judges of the county court are entitled to said compensation in addition to that allowed by Section 2494.3, Mo. R.S.A., when acting in both capacities on the same day. Section 2494.3 provides:

"In all counties of the third class in this state, the judges of the county court shall receive for their services the sum of ten dollars per day for each of the first five days in any month that they are necessarily engaged in holding court and shall receive five dollars per day for each additional day in any month that they may be necessarily engaged in holding court, and shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court. The per diem compensation herein

fixed shall be paid at the end of each month and the mileage compensation shall be paid at the end of each month on presentation of a bill, by each of the respective county judges setting forth the number of miles necessarily traveled; provided, however, that this increase in compensation shall not become effective during any county judge's present term of office."

The next section of the same act, Section 2494.4, provides for additional compensation when judges of the county court act as members of the county board of equalization. Said section is as follows:

"In addition to the compensation provided in Section 1 of this act, the judges of the county court in counties of the third class shall receive five dollars per day for each day they shall act as members of the county board of equalization."

It is a well-recognized rule of statutory construction that statutes relating to the same subject are to be read together and harmonized so as to give effect to each. The court, in the case of *State v. State Tax Commission*, 153 S.W. (2d) 43, said at page 45:

"It is the duty of courts in construing two or more statutes relating to the same subject, to read them together and to harmonize them, if possible, and to give force and effect to each." *Little River Drainage District v. Lassater*, 325 Mo. 493, 29 S.W. 2d 716, loc. cit. 718. And this applies not only to acts passed at the same session of the legislature, but also to acts passed at prior and subsequent sessions. *State ex rel. and to Use of George B. Peck Co. v. Brown, Secretary of State*, 340 Mo. 1189, 105 S.W. 2d 909."

See also Whalen v. Buchanan County, 111 S.W. (2d) 177, l.c. 180.

There is nothing in the foregoing statutes which prohibits the proposition under consideration, and, in fact, the terms of Section 2494.4, supra, declare that the compensation allowed judges of the county court as members of the county board of equalization is additional to that provided in the preceding section. Even though said judges act in both capacities on the same day, they should be compensated for both functions. This is a natural result, and the Legislature must be presumed to fully understand the consequences of their acts.

In the absence of a statutory prohibition, the foregoing provisions must be harmonized and effect given to each, thereby allowing judges of the county to receive compensation for holding court and acting in the performance of their duties as members of the county board of equalization although both functions are performed on the same day.

We submit that the above reasoning with regard to the harmonizing of statutes applies with equal force to the office of county surveyor and ex officio county highway engineer in counties where the county court, under the provisions of Section 8660, Mo. R.S.A., appointed the county surveyor to the office of county highway engineer. Of course, the county surveyor is entitled to compensation as a member of the board of equalization, so the only question is whether the county surveyor may receive said compensation and also compensation as county highway engineer when acting in both capacities on the same day. It is clear that when these provisions were enacted the Legislature contemplated that he should receive compensation from both sources, even in this situation, and we must therefore harmonize said provisions and give effect to each.

Section 8660, Mo. R.S.A., specifically provides that said county highway engineer shall receive compensation fixed by the county court and also such fees as are allowed by law for his services as county surveyor. And the fee for acting as a member of the county board of equalization is such a fee as is allowed by Section 13425.1. It necessarily makes no difference whether or not the county surveyor acts in both capacities on the same day.

The county surveyor, in the situation at hand, is actually an ex officio county highway engineer, that is, he holds the second office by virtue of the first. It is an authority not expressly conferred on the county surveyor as an individual but rather annexed to his official position, therefore said offices are separate and distinct. Because of this fact any argument, to the effect that the county surveyor is not entitled to compensation as a member of the county board of equalization because he receives a salary (as county highway engineer) and is thereby within the prohibition set out in Section 11008, is unfounded.

With reference to the third question submitted, your attention is directed to our opinion rendered to Honorable David E. Impey, Prosecuting Attorney of Texas County, dated August 14, 1947, holding that the clerk of the county court in counties of the third class is entitled to receive \$5.00 per day for each day that he is present and acts in the performance of his duties as secretary of the county board of equalization. We are enclosing herewith a copy of said opinion.

#### Conclusion.

Therefore, it is the opinion of this department that judges of the county court of a county of the third class are entitled to receive compensation for holding court and acting in the performance of their duties as members of the county board of equalization although both functions are performed on the same day. It is further the opinion of this department that the county surveyor of a county of the third class who is ex officio county highway engineer is entitled to receive compensation for acting in the performance of his duties as a member of the county board of equalization as well as that compensation allowed him as county highway engineer even though the functions of both offices are performed on the same day.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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Enc.