

February 5, 1948

COUNTIES. Board of supervisors—road maintenance—supervision by engineer. The board of supervisors shall establish policy for road construction and maintenance, allocate funds and in the end inspect the work generally leaving the immediate supervision and responsibility for the good-faith performance definitely in the hands of the county engineer.

Mr. A. Wayne Eckhardt, County Attorney, Muscatine, Iowa: We acknowledge receipt of your letter of January 29 requesting an official opinion from this office upon the interpretation of certain statutes of the state of Iowa relating to the construction and maintenance of secondary roads and more particularly to sections 309.1, 309.21 and 309.67, Code of 1946. You state that your special interest is in the interpretation of the particular sections insofar as they relate to the board of supervisors and the county engineer. Your questions are as follows:

"1. Is there any authority in any of the sections cited above or in related sections for individual members of the board to act as foreman of maintenance work in their assigned territory or in their district where the county is divided into supervisor districts?"

2. Do these sections mean that the board shall establish policy as to construction and maintenance, allocate funds for maintenance and construction, and in the end inspect same generally, leaving the immediate supervision and responsibility for the good faith performance of the work definitely in the hands of the county engineer?"

Section 309.1 provides as follows:

"Construction, repair and maintenance. The duty to construct, repair, and maintain the secondary road and bridge systems of a county is hereby imposed on the board of supervisors."

Section 309.21 provides as follows:

"Supervision of construction and maintenance work. All construction and maintenance work shall be performed under the direct and immediate supervision of the county engineer who shall be deemed responsible for the efficient, economical and good-faith performance of said work."

Section 309.67 provides as follows:

"Repair and dragging. The county board of supervisors and the engineer are charged with the duty of causing the secondary road system to be so repaired and dragged as to keep same in proper condition, and shall adopt such methods as are necessary to maintain continuously, in the best condition practicable, the entire mileage of said system.

In addition to the above they shall specifically:

1. Keep all sluices, culverts, and bridges, and the openings thereof, and all side ditches of the road, free from obstructions.
2. Provide such side ditches with ample outlets.
3. Remove loose stones and other impediments from the traveled part of the highway.
4. Fill depressions and keep the road free from ruts, water pockets and mud holes.

5. Repair the approaches to bridges and culverts and keep such approaches smooth and free from obstruction."

In addition to said sections it is well to consider in connection therewith section 309.17 which provides as follows:

"Engineer—term. The board of supervisors shall employ one or more registered civil engineers who shall be known as county engineers. The board shall fix their term of employment which shall not exceed three years, but the tenure of office may be terminated at any time by the board."

Also section 309.19 which provides as follows:

"Duties—bonds. Said engineers shall, in the performance of their duties, work under the directions of said board and shall give bonds for the faithful performance of their duties in a sum not less than two thousand nor more than five thousand dollars, to be approved by the board."

It is well to note at the beginning of this discussion that the Supreme Court of Iowa in the case of McKinley vs. Clarke County, 228 Iowa 1185, holds that a county engineer is not merely an employee, but is an official and as a public official has certain defined powers and duties in reference to his work and those powers and duties are co-ordinated with other public officers in the county, namely: the county board of supervisors throughout chapter 309 of the 1946 Code of Iowa.

We, therefore, start with the premise that the board of supervisors and the county engineer are public officials and that the engineer is hired by the board of supervisors, and in the performance of his duties he shall work under the direction of the board of supervisors. He is a bonded official, as provided in section 309.19.

The primary duty to construct, repair and maintain the secondary roads of a county is imposed upon the board of supervisors. They should, with the advice of the engineer, determine programs relating to both construction and maintenance work. It is their duty to determine the advisability of certain projects. When the board acting as a board and not as individual members, carries out its duties as prescribed in the statutes, including duties prescribed in section 309.67, and determines a program relating to certain roads, bridges, parts of roads and approaches to bridges, it is their duty to turn such program over to the county engineer. The joint duty is several insofar as each has his part to perform.

It is the engineer's duty and he has the authority to direct said work and supervise the county employees in the authorized performance of construction and maintenance work. Because of his knowledge and training, the legislature has placed upon him the statutory responsibility as to how the work should be done.

The law therefore contemplates a joint responsibility in the construction and maintenance of secondary roads. It contemplates that the board of supervisors and the engineer will work together toward good secondary road construction and maintenance. There is no conflict of power, duty or authority. The supervisors have the power and the

duty, not only to pass upon the necessity and desirability of the construction and maintenance work on such roads in their county, but also have the authority to direct the county engineer to proceed with the job. The manner and method or procedure is within the responsibility of the engineer, subject to the final inspection of the board and the engineer is responsible to the board to the extent of his efficient, economical and good-faith performance of the work directed to be done by the board of supervisors.

It is, of course, elementary and we hold that the individual members of the board should not act as foremen of maintenance work even in their assigned territory or districts as individual members have no power or authority as individual members, but have only the duty to report to the board as a whole as to the conditions in their districts requiring board action. When the board members approve their recommendations, the work is to be supervised by the engineer.

From the discussion above set out, it is apparent and we hold that the board should establish the policy as to construction and maintenance, as well as the feasibility of certain projects, allocation of funds for the construction and maintenance of the projects and then direct the engineer to proceed with them and in the immediate supervision and responsibility for the good-faith performance of the work shall be left to the county engineer.

February 10, 1948

ELECTIONS: Residents on federal military reservation at Fort Des Moines. A resident of the veterans' village at Fort Des Moines acquires no right to vote by virtue of his residence on the military reservation.

Mr. Carroll O. Switzer, County Attorney, Des Moines, Iowa: We have your letter enclosing a copy of letter received from Roy L. Stephenson, mayor of Fort Des Moines veterans' village, requesting opinion as to whether residence in Fort Des Moines veterans' village constitute residence within the state and county under the election laws of the state of Iowa, and requesting an opinion on this matter. Mr. Stephenson's letter states as follows:

"We respectfully request your opinion as to whether residence in Fort Des Moines veterans' village constitutes residence within the state and county under the election laws of the state of Iowa.

In 1946 the Polk county board of supervisors created a rural voting precinct, known as Bloomfield township precinct No. 6, in the Fort Des Moines housing area and the residents of the area were permitted to vote.

During the past year your office has rendered opinions regarding other matters in connection with Fort Des Moines which make it appear that it is your opinion, since the Fort Des Moines housing area is located on what was formerly a federal army post that the county has no jurisdiction. This is somewhat a reversal of the position taken by your predecessor.

We respectfully request your early opinion with regard to this matter. Should it be your opinion that residents in the Fort Des Moines army post area do not constitute residents of the county and state for