

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

PAUL L. DOUGLAS
Attorney General

GERALD S. VITAMVAS
Deputy Attorney General

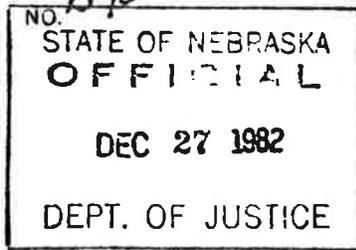
WARREN D. LICHTY, JR.
Assistant Attorney General
Chief Counsel
Department of Roads

State Highway Building
P.O. Box 94759
Lincoln, Nebraska 68509-4759
Telephone (402) 473-4611

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ASSISTANT ATTORNEYS
GENERAL

GARY R. WELCH
JOHN P. REGAN
DALE L. BABCOCK, JR.
ROBERT G. AVEY
RANDALL E. SIMS
JOHN E. BROWN
WILLIAM J. ORESTER
SHARON M. LINDGREN



- SUBJECT:** Qualifications of County Surveyor in counties under 50,000 population.
- REQUESTED BY:** Randy R. Stoll, Seward County Attorney, Seward, Nebraska, 68434.
- OPINION BY:** Paul L. Douglas, Attorney General;
Randall E. Sims, Assistant Attorney General.
- QUESTION:** 1. As applied to a county under 50,000 population, does the term "qualified surveyor" as used in Neb.Rev.Stat. §23-1901.01 (1982 Supp.) refer to a licensed or registered land surveyor, or can a non-licensed or registered elected surveyor take office provided he hires qualified licensed surveyors to actually conduct surveys?
- CONCLUSION:** 1. The term "qualified surveyor" means a person duly registered to practice land surveying under the provisions of Neb.Rev.Stat. §81-8,108, et seq. (Reissue 1981). This would preclude a non-registered person from serving as a County Surveyor.
- QUESTION:** 2. If there is no qualified surveyor within a county who will accept the office of County Surveyor, is the County Board required to appoint a competent surveyor to assume the office, either on a full or part time basis?
- CONCLUSION:** 2. Yes, for the full term of office.

In commenting on both questions 1 and 2, it is noted that Article IX, Section 4 of the Nebraska Constitution provides in pertinent part that, "the Legislature shall provide by law for the election of such county and township officers as may be necessary". This provision has been implemented as regards County Surveyors by Neb.Rev.Stat. §32-308(3) (1982 Supp.), which states in pertinent part:

"When there is a qualified surveyor within a county who will accept the office of county surveyor if elected, a county surveyor on either a full-time or part-time basis, as determined by the county board, shall be elected in each county at the general election in 1982 and every fourth year thereafter; . . ."

It is considered that the above statutory section sets a qualification for the elective office, namely that of being a "qualified surveyor". Under the provisions of Neb.Rev.Stat., §81-8,108:

". . .it shall be unlawful for any person to practice or to offer to practice land surveying in this state unless such person has been duly registered under the provisions of sections 81-8,108 to 81-8,127."

Under the provisions of Neb.Rev.Stat. §23-1901 (1982 Supp.):

"It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that he or she may be called upon to make and record the same as hereinafter provided."

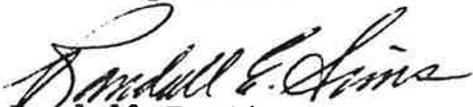
It is considered that this places basic responsibility on the County Surveyor, even though he might act through an agent, and as such, he still must be qualified.

Finally, it is considered that the provisions of Neb.Rev.Stat. §32-308(3) (1982 Supp.) and of Neb.Rev.Stat. §23-1901.01 (1982 Supp.) must be read in para materia, with the conclusions drawn that under the first named section, there must be a qualified County Surveyor, either elected or employed, and under the second section, that if employed, he or she must be "competent", which is considered the equivalent of "qualified", and that he or she may be

employed either on a full-time or part-time basis, but in either case, to serve the same term as that of an elected surveyor.

Very truly yours,

PAUL L. DOUGLAS
Attorney General


Randall E. Sims
Assistant Attorney General

RES/ta

Approved:


Paul L. Douglas
Attorney General

