

# DEPARTMENT OF JUSTICE

## STATE OF NEBRASKA

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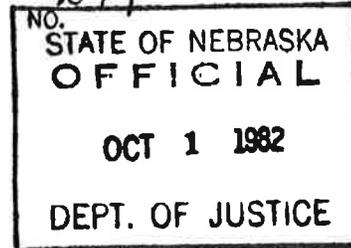
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September 24, 1982



Senator Emil E. Beyer, Jr.  
Nebraska State Legislature  
State Capitol  
Lincoln, NE 68509

Dear Senator Beyer:

You have asked for a definition of the term "full time surveyor" as that term is used in Neb.Rev.Stat. §32-308 (1982 Supp.), in order to determine if corrective legislation is necessary, to allow county surveyors to retain fees for work done after normal courthouse hours. Although that term has not been defined by statute, "full time" has been defined by the Nebraska Supreme Court in litigation involving "full time" deputy sheriffs. In Grace v. County of Douglas, 178 Neb. 690, 134 N.W.2d 818 (1965), the court states on page 694 as follows:

Websters New International Dictionary (2d Ed.), p. 1018, defines "full time" as follows: "The amount of time considered the normal or standard amount for working during a given period, as a day, week, or month." It is evident that the ordinary meaning of the term and the one we can assume to be embraced within the legislative intent would be the usual working day for the performance of the duties of the particular office.

In the case of county surveyors, full time would be that amount of time considered to be the usual, normal, or standard work day of a county officer. "Full time" therefore, would not include work performed during hours after a standard or normal work day. Presumably, this would exclude work performed during hours other than normal courthouse hours.

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You have further inquired about the retention of fees received by the county surveyor for work performed for individuals after normal courthouse hours. Absent agreement with the county board to the contrary, such fees may be retained by the county surveyor.

Neb.Rev.Stat. §23-1901.01 (1982 Supp.) provides in pertinent part:

When there is no qualified surveyor within a county who will accept the office of county surveyor, the county board of such county may employ a competent surveyor either on a full-time or part-time basis from any other county of the State of Nebraska to such office. In making such employment, the county board shall negotiate a contract with the surveyor, such contract to specify the terms and conditions of the appointment or employment, including the compensation of the surveyor, which compensation shall not be subject to the provisions of section 33-116.

Because a county surveyor hired by the county board is hired pursuant to contract, it is possible that a term or condition of that employment contract could involve "after hours" employment and the retention of fees for such employment. In such a case, retention of fees for "after hours" work would be governed by the employment contract.

You have inquired about the need for legislation permitting the filing of surveys with the county clerk, when the county surveyor's office is several miles remote from the county courthouse. Currently, surveys of a registered land surveyor must be filed with the survey record repository if the county surveyor does not maintain a regular office in the county courthouse.

Neb.Rev.Stat. §81-8,122.01 (1982 Supp.) provides in pertinent part:

If no regular office is maintained in the county courthouse for the county surveyor, it shall be filed in the survey record repository.

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The repository must, within thirty (30) days of receipt of a survey, transmit a copy of the same to the county. Neb.Rev.Stat. §84-413(2) (1982 Supp.) provides that the survey record repository shall:

(2) Provide a copy of survey records to the county in which the survey was conducted. Such copy shall be transmitted to the county within thirty days of its receipt by the repository and at no cost to the county;

. . .

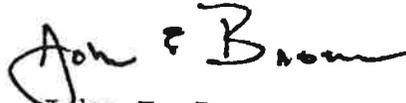
A copy of a survey transmitted to the county by the repository must be placed on file in the office of the county clerk, if the county surveyor does not maintain an office in the county courthouse. Neb.Rev.Stat. §81-8,122 (1982 Supp.) provides:

When the county shall receive an official copy of a survey from a registered land surveyor or from the survey record repository established pursuant to section 84-412, such copy shall be placed on file in the office of the county surveyor in the county where the land is located. If no regular office is maintained in the county courthouse for the county surveyor, it shall be placed on file in the office of the county clerk.

Because surveys must be filed with the county clerk after they are filed with the survey record repository under the situation that you describe, we are of the opinion that no problem exists regarding whether such surveys should be "allowed" to be so filed.

Very truly yours,

PAUL L. DOUGLAS  
Attorney General



John E. Brown  
Assistant Attorney General

JEB/ta

cc: Patrick J. O'Donnell  
Clerk of the Legislature

