

will represent regardless of a resolution of council ordering him to represent the city."

In Opinions of the Attorney General for 1915, at page 664, it is held:

"The board of education of a county school district has no authority in law to employ counsel other than prosecuting attorney of the county."

And again, in Opinions of the Attorney General for 1915, page 1911, it is held:

"It is the duty of prosecuting attorneys to prepare bond issues and transcripts for boards of education of which they are legal advisers."

The opinion of the Attorney General for 1923 referred to above, with which I concur, is based on the fact that the preparation of an abstract of title to real estate is neither the giving of legal advice nor the conducting of a case in court. The preparation of abstracts of title is a business by itself, aside from strictly legal business. It furnishes the facts and the basis for the preparation of a legal opinion with reference to the title which it purports to abstract and contains the facts from which a legal opinion may be formulated, but does not in and of itself, consist of the doing of the things which Section 4761, General Code, requires prosecuting attorneys or city solicitors as public officials, to do. It is not, in my opinion in any way analogous to the conducting of a civil action brought by or against a board of education, which by the terms of Section 4761, a prosecuting attorney and a city solicitor are specifically enjoined to do.

I am therefore of the opinion that it is the duty of a prosecuting attorney, in his official capacity, to institute and conduct actions to quiet title to school property for a rural board of education within his county, when it becomes necessary to do so, in order to render said property marketable.

Respectfully,
GILBERT BETTMAN,
Attorney General.

145.

DEPUTY COUNTY SURVEYOR—EMPLOYMENT WHEN NOT PERFORMING PUBLIC DUTIES—CONDITIONS.

SYLLABUS:

A deputy county surveyor may lawfully accept employment from a city, corporation or person during hours when he is not required to be on duty for the county, provided said services are in nowise inconsistent with the duties of his office.

COLUMBUS, OHIO, March 4, 1929.

HON. DANIEL P. BINNING, *Prosecuting Attorney, Coshocton, Ohio.*

DEAR SIR:—I am in receipt of your letter of February 14, 1929, which is as follows:

"The deputy county surveyor of this county has an opportunity to do some work for the city of Coshocton, during hours which he is not employed by the city.

Section 14615 G. C. is as follows: 'The county surveyor, his deputies, and assistants shall not contract for or carry on any engineering or surveying work other than that herein provided for.'

It appears to me that this section would prohibit him from doing any work for the city, but I would like to have an opinion from you on this section of law, thinking that you may have some decisions or opinions rendered by the Attorney General which might give a different interpretation than mine on this section."

I assume that your question as intended is, can a deputy county surveyor lawfully perform work for a city during hours when he is not employed by the county. With reference to this particular question, your attention is directed to a former opinion of this department rendered on May 14, 1927, and reported in Opinions of the Attorney General, 1927, Vol. II, page 807. The third branch of the syllabus of this opinion reads as follows:

"A deputy county surveyor may be employed for part time and during that portion of his time which is not required under his appointment as deputy county surveyor, he may perform services for a city or any corporation or person providing said services are in nowise inconsistent with the duties of his office."

Section 14615 of the General Code of Ohio, to which you refer in your letter, is part of the act to regulate the duties and fix the salaries of county surveyors and deputies in counties having a city of the first class, second grade. House Bill No. 579, passed by the 75th General Assembly, 1902, 95 Laws of Ohio, 921. This act was one of local legislation and applied to Cuyahoga County only. Similar acts were declared unconstitutional by the Supreme Court of Ohio in that they were in conflict with Section 26, Article II of the Constitution of Ohio. See *State of Ohio on relation of Gilbert vs. Yates, Auditor of Pickaway County*, 66 O. S. 546.

Therefore, answering your question specifically, I am of the opinion that a deputy county surveyor may legally accept employment from a city, corporation or other person during hours when he is not required to be on duty for the county, provided said services are in nowise inconsistent with the duties of his office.

Respectfully,

GILBERT BETTMAN,

Attorney General.

146.

SHORTHAND REPORTER—APPOINTMENT PER DIEM BY COURT IN CIVIL AND CRIMINAL CASES—MAXIMUM RATE—APPROPRIATION BY COUNTY COMMISSIONERS NECESSARY.

SYLLABUS:

If the county commissioners have made a proper appropriation for the purpose, the compensation, not exceeding fifteen dollars per day, of a shorthand reporter appointed by the court to take testimony on the trial of a civil or criminal case, should be paid out of the county treasury on the warrant of the county auditor upon approval by the court of the bill of such shorthand reporter for his services.