

1705.

JOINT COUNTY DITCH PROCEEDINGS—COUNTY AUDITOR IS SECRETARY OF BOARD OF COUNTY COMMISSIONERS—SECTION 2566 G. C. CONSTRUED.

SYLLABUS:

1. *By virtue of his office, a county auditor is secretary of the board of county commissioners, and as such it is the duty of a county auditor to perform the functions of a clerk of the board of county commissioners.*

2. *In a county in which it is necessary for a clerk of the board of county commissioners to devote his entire time to the discharge of the duties of such position, and the county commissioners so find, the county commissioners may appoint a clerk, and such assistants to such clerk as they deem necessary, in place of the county auditor.*

3. *In joint county ditch proceedings, the county auditor of the county in which the petition for the improvement is filed is, by virtue of his office, the clerk of the joint board of county commissioners.*

COLUMBUS, OHIO, September 3, 1924.

HON. EDWARD K. CAMPBELL, *Prosecuting Attorney, Bellefontaine, Ohio.*

Dear Sir:—

Receipt is acknowledged of your recent communication in which you request my opinion as to who is really clerk of the board of county commissioners, and clerk of the joint board of county commissioners in joint county ditch matters.

Section 2566 of the General Code reads:

“By virtue of his office, the county auditor shall be the secretary of the county commissioners, except as otherwise provided by law. When so requested, he shall aid them in the performance of their duties. He shall keep an accurate record of their proceedings, and carefully preserve all documents, books, records, maps and papers required to be deposited and kept in his office.”

Section 2409 of the General Code, which is a part of the chapter entitled “County Commissioners”, reads:

“If such board finds it necessary for the clerk to devote his entire time to the discharge of the duties of such position, it may appoint a clerk in place of the county auditor and such necessary assistants to such clerk as the board deems necessary. Such clerk shall perform the duties required by law and by the board.”

It will be noted, from a reading of the above quoted sections (1) that the auditor, by virtue of his office, is made the secretary of the board of county commissioners and the duties of clerk are thereby imposed upon him; (2) if a board of county commissioners find that it is necessary for the clerk to devote his entire time to the duties of such position, it may appoint a clerk in place of the county auditor, and such assistants to such clerk as the board deems necessary.

It would follow that the county auditor is the secretary, and as such the clerk of the board of county commissioners; but in counties where it is necessary for the county auditor, acting in the capacity of secretary to the board of county commissioners, to devote his entire time to the duties thereof, and the county commissioners so find, they may appoint a clerk in place of the county auditor, and as many assistants to such clerk as they deem necessary. In the event such finding and appointment be made, the duties of the county auditor, acting in the capacity of secretary to the board of county commissioners, would be eliminated, and such duties would devolve upon the clerk, so appointed, and his assistants, if any.

In connection with joint county ditches, it is provided, in Section 6536 of the General Code, that the proceeding shall be conducted by a joint board of county commissioners, consisting of the members of the boards of commissioners of the several counties in which land may be benefited or damaged by the proposed improvement, and in such case the petition for the improvement may be filed with the county auditor of any county in which is located land that will be affected by the proposed improvement.

Section 6539 of the General Code provides that upon the filing of such petition the auditor of the county with whom the petition is filed, shall (1) fix a date for the hearing; (2) call a joint meeting of the commissioners of all the counties interested, which shall be held at the county seat of the county in which the petition is filed; (3) give notice of the filing of such petition and of such hearing to the commissioners of his county; and (4) mail notice of such hearing, together with a copy of the petition, to the auditors of the other counties interested, who shall forthwith notify the commissioners of their counties, respectively, of the filing of such petition and of the date fixed for the hearing thereon.

This section further provides that all applications, remonstrances, claims for compensation or damages, reports, schedules, certificates, statements, contracts, bonds and all other papers shall be filed with the auditor with whom the petition is filed.

Section 6538 of the General Code provides that on the date fixed by the auditor, the commissioners from each of the counties affected by the proposed improvement shall meet in the county in which the petition is filed and organize a joint board of commissioners. A quorum of such joint board at each meeting thereof shall consist of at least two commissioners from each county; all decisions of the joint board shall be made by a vote of at least two members of each board of county commissioners, and in case any question does not receive the affirmative vote of two members of each board of county commissioners represented, then such question shall be decided in the negative. The vote shall be recorded in the journal of the commissioners. After the view of the improvement by the joint board of commissioners, all hearings shall be at the court house in which the petition is filed.

The section further provides:

"The auditor of the county in which the petition is filed shall act as the clerk of joint board, and shall enter the findings in the journal of the commissioners of his county, and shall do all things required to be done by the auditor, and shall make the final record of the improvement in his county."

A reading of the quoted provision of said Section 6538 of the General Code discloses that by specific legislation the county auditor of the county in which the petition is filed is made, by virtue of his office, the clerk of the joint board of county commissioners in connection with joint county ditch matters; and while

there is statutory provision, hereinbefore referred to, under the conditions hereinbefore set out, for the appointment of a clerk for a board of county commissioners, there is no statutory provision for the appointment of a clerk for a joint board of county commissioners in connection with joint county ditch matters.

It would follow, and you are advised, that the county auditor of the county in which a petition for a joint county ditch is filed is, by virtue of his office, under the statute, the clerk of the joint county board of commissioners in connection with joint county ditches.

Respectfully,
C. C. CRABBE,
Attorney General.

1706.

PROSECUTING ATTORNEY—"FURTHERANCE OF JUSTICE FUND"—
COUNTY AUDITOR MAY NOT REFUSE TO PAY OVER TO PROSE-
CUTING ATTORNEY AMOUNT PROVIDED IN SECTION 3004 G. C. BE-
CAUSE OF FAILURE TO FILE AN ITEMIZED ANNUAL STATEMENT.

SYLLABUS:

The county auditor has no authority to refuse the payment of the annual amount allowed the prosecuting attorney under Section 3004, General Code, because of failure to file an itemized annual statement.

Mandamus lies to require the prosecuting attorney to file said annual itemized statement of the expenditures made from said fund.

COLUMBUS, OHIO, September 3, 1924.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen:—

Your letter of recent date, asking for an opinion of this department, reads as follows:

"Section 3003 G. C. authorizes an allowance, annually, to the prosecuting attorney to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice not otherwise provided for. The section provides that upon an order of the prosecuting attorney, the county auditor shall draw his warrant from the county treasury, payable to the prosecuting attorney for such amount as the order requires, not exceeding the amount provided for herein and to be paid out of the general fund of the county. The third paragraph of the same section provides that the prosecuting attorney shall annually, before the first Monday in January, file with the county auditor an itemized statement, duly verified by him, as to the manner in which such fund has been expended during the current year, and shall, if any part of such fund remains in his hands not expended, pay the same into the county treasury.