

Code, hereby certify that the foregoing summary is a fair and truthful statement of the proposed law submitted to me. JOHN W. BRICKER, Attorney General."

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4290.

SURVEYOR—DECREASE IN TAX DUPLICATE DOES NOT AUTOMATICALLY DECREASE SALARY OF SURVEYOR.

SYLLABUS:

A decrease in the valuation of the aggregate of the tax duplicate for real estate and personal property of a county from the valuation of such duplicate as it existed on the twentieth day of December, 1915, does not automatically decrease the item of the salary of the county surveyor which is based upon the valuation of such tax duplicate.

COLUMBUS, OHIO, May 25, 1935.

HON. JOHN M. KIRACOFE, *Prosecuting Attorney, Eaton, Ohio.*

DEAR SIR:—Your communication of recent date reads as follows:

"Sec. 7181 G. C.

The County Surveyor shall give his entire time and attention to the duties of his office and shall receive an annual salary to be computed as follows:

One dollar per mile for each full mile of the first one thousand miles of the public roads of the county; and in addition thereto forty dollars per thousand for each full one thousand of the first fifteen thousand of the population of the county as shown by the federal census next preceding his election, thirty dollars per thousand for each full one thousand of the second fifteen thousand of the population of the county, twenty-five dollars per thousand for each full one thousand of the third fifteen thousand of the population of the county, fifteen dollars per thousand for each full one thousand of the fourth fifteen thousand of the population of the county, and five dollars per thousand for each full one thousand of the population in the county in excess of sixty thousand; and also in each county in which on the twentieth day of December, 1915, the aggregate of the tax duplicate for real estate and personal property was twenty-five million dollars, or more, the sum of fifty dollars for each full one million dollars, not more than fifteen, by which such tax duplicate exceeded twenty-five million dollars, ten dollars for each full one million dollars, not more than sixty, by which such tax duplicate exceeded forty million dollars and five dollars for each full one million dollars by which such tax duplicate exceeded one hundred million dollars; provided, however, * * *'

Does a decrease in the tax duplicate automatically decrease the salary of the surveyor in the same manner as a decrease in population?

In other words, would a decrease of the tax duplicate from forty-five mil-

lions to thirty millions in any way effect the salary where the decrease happened before he became elected and took office?"

Section 7181, General Code, quoted in part in your communication, provides that the annual salary of the county surveyor shall be composed of three amounts, viz., the amounts based on the mileage of the public roads of the county, the population of the county and on the aggregate of the tax duplicate for real estate and personal property of the county. The portion of the statute regulating the first item extends to the first semi-colon, that regulating the second item, to the second semi-colon, while the third item extends to the third semi-colon. Such section was originally passed as section 138 of the Cass Highway Act in 1915 (106 O. L. 574, 612). At the time of its original enactment, the portion of the statute between the second and third semi-colon was not included therein.

The language of the statute between the second and third semi-colons which was added in the amendment of the original statute in 107 Ohio Laws, 110, reads:

"and also in each county in which *on the twentieth day of December, 1915*, the aggregate of the tax duplicate for real estate and personal property was twenty-five million dollars or more the sum of fifty dollars for each full one million dollars, not more than fifteen, by which such tax duplicate exceeded twenty-five million dollars, ten dollars for each full one million dollars, not more than sixty, by which such tax duplicate exceeded forty million dollars and five dollars for each full one million dollars by which such tax duplicate exceeded one hundred million dollars;" (Italics mine.)

From the clear language of such above quoted portion of section 7181, General Code, it is evident that the third item making up the salary of a county surveyor is at all times to be computed on the basis of the aggregate value of the tax duplicate of the real estate and personal property of the county as it existed on the twentieth day of December, 1915. In other words, the time of the valuation remains stationary. The words between the first and second semi-colons of section 7181, General Code, "as shown by the federal census next preceding his election" modify and have relation only to the second item of the salary of a county surveyor,—the item which is based on population.

Such construction is in line with that to be given to section 3001, General Code, controlling the salary of a county commissioner. Said section 3001, General Code, reads so far as pertinent here:

"In each county in which on the twentieth day of December, 1911, the aggregate of the tax duplicate for real estate and personal property is five million dollars or less, such compensation shall be nine hundred dollars, and in addition thereto, in each county in which such aggregate is more than five million dollars, three dollars on each full one hundred thousand dollars of the amount of such duplicate in excess of five million dollars.

The language of the foregoing section shows that the date for the valuation—December 20, 1911—is stationary.

The above quoted portion of section 3001, General Code, has read the same since the first amendment of the same section in 1911 (102 O. L. 514). Section 3001, General Code, as it read when the present General Code was adopted in 1910, provided:

"The annual compensation of each county commissioner shall be determined as follows:

In each county in which *on the twentieth day of December of the preceding year* the aggregate of the tax duplicate for real estate and personal property is five million dollars or less, such compensation shall be seven hundred fifty dollars, and in addition thereto, in each county in which such aggregate is more than five million dollars, three dollars on each full one hundred thousand dollars of the amount of such duplicate in excess of five million dollars * * *."

It is obvious that prior to the present wording of the above quoted portion of section 3001, General Code, adopted in 1911, a county commissioner's compensation was based on the tax duplicate valuation taken on the twentieth day of December "*of the preceding year.*" In other words, the date of valuation was not then stationary, as is now the case.

Thus, if the legislature had intended that the item of the salary of a county surveyor, dependent upon the valuation of the tax duplicate, should change as the valuation might change annually, instead of being stationary, it seems clear that it would have used such language or similar language to that used in section 3001, General Code, as it read prior to amendment in 1911. The legislature is presumed to know the existing statutes. Hence, when it inserted the provision for the item of salary of a county surveyor based upon the tax duplicate, in section 7181, General Code, in 1917, it must have known that under existing section 3001, General Code, a county Commissioner's salary, based on the tax duplicate, was computed from a stationary date of valuation, and by the use of similar language in section 7181, General Code, the same system would apply to a county surveyor.

In closing, it may be stated that the Bureau of Inspection and Supervision of Public Offices has several times since 1917 advised county officials that the third item of the salary of a county surveyor, under section 7181, General Code, is computed at all times on the basis of the valuation of the tax duplicate of the county as it existed on the twentieth day of December, 1915.

In view of the foregoing analysis of section 7181, General Code, I am of the opinion in specific answer to your two questions that:

1. A decrease in the tax duplicate of a county from the amount of such duplicate in force on the twentieth day of December, 1915, does not automatically decrease the item of the salary of the county surveyor, which is based upon the valuation of such tax duplicate.

2. A decrease in the valuation of the tax duplicate of a county from forty-five millions to thirty millions does not in any way effect the third item of the salary of a county surveyor, even though the decrease happened before a particular county surveyor of the county was elected and assumed the duties of the office.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4291.

OLD AGE PENSION—RECIPIENT OF OLD AGE PENSION NOT ENTITLED TO BLIND RELIEF—UNNATURALIZED PERSON NOT ELIGIBLE FOR OLD AGE PENSION BUT ELIGIBLE FOR BLIND RELIEF.

SYLLABUS:

1. *A person receiving an Old Age pension is not entitled to blind relief while receiving such Old Age Pension by virtue of the inhibition against such contained in section 2967, General Code.*

2. *By virtue of subdivision (c) of Section 1359-10, General Code, an unnaturalized person is not entitled to an Old Age Pension.*

3. *An unnaturalized person, assuming all other conditions of the blind relief laws are complied with, is entitled to blind relief.*

COLUMBUS, OHIO, May 25, 1935.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“Will you kindly give us your opinion on the following questions:

First: May one receiving old age pension be granted and paid blind relief by the County Commissioners and if so, will the amount be limited by the sum being received as Old Age Pension?

Second: Is an unnaturalized person entitled to blind relief and old age pension?”

Section 2967, General Code, a part of the blind relief law, provides in part:

“* * * If the board of county commissioners be satisfied that the applicant is entitled to relief hereunder, said board shall issue an order therefor in such sum as said board finds needed, not to exceed four hundred dollars per annum, to be paid quarterly from the funds herein, provided on the warrant of the county auditor, *and such relief shall be in place of all other relief of a public nature; * * **” (Italics the writer’s)

In an opinion of the Attorney General for 1914, Vol. II, page 1303, it was held as disclosed by the syllabus:

“The words, ‘and such relief shall be in place of all other relief of a public nature,’ as found in section 2967, G. C., do not preclude a pensioner of the federal government from drawing blind relief, nor does the drawing of a federal pension affect the right of a blind person to relief under the Ohio blind relief laws.”

Two reasons were stated for this conclusion in the opinion at page 1303:

“1. The federal pension is not ‘relief’ in the sense of the language used in section 2967.