

4140.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS CHIEF CLERK—FRANK M. WEST.

COLUMBUS, OHIO, March 9, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4141.

EXPENSES—COUNTY SURVEYOR'S OFFICE—PAID FROM GENERAL
FUND RATHER THAN SPECIAL ROAD TAX LEVY.

SYLLABUS:

The expense of the county surveyor and his office, in connection with the cost of the construction of a road improvement, are to be paid from county general funds and such cost cannot be proportioned and paid from the proceeds of a special road tax levy authorized by Section 5625-15 et seq., of the General Code.

COLUMBUS, OHIO, March 10, 1932.

HON. P. L. A. LIEGHLEY, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of a request for opinion from your predecessor, upon the following state of facts:

“Cuyahoga County has a fund of approximately three million dollars for construction and maintenance of county roads, being the proceeds of a special levy approved by the electorate under the provisions of General Code, 5625-15. Heretofore, the entire cost of the office of the county engineer, including plans, estimates, surveyor's payroll, office and field supplies and expense in connection with road improvements paid for out of the proceeds of this special levy have been paid out of county general funds.

Your opinion is requested as to whether or not it would be legal to pay from the proceeds of the special levy such part of the cost of the engineer's office as applies directly to the development and construction of a road improvement constructed by the county commissioners out of the proceeds of the special levy aforesaid.”

Section 2792 of the General Code, provides that the county surveyor shall perform all duties for the county now or hereafter authorized or declared by law to be done by a civil engineer or surveyor.

Section 5625-9 of the General Code, providing for the various funds which each subdivision shall establish, reads in part:

“(a) General Fund.

* * * *

(d) A special fund for each special levy.

* * * *”

Section 7181 of the General Code, relative to the salary of the county surveyor, reads in part:

“* * Such salary shall be paid monthly out of the general county fund upon the warrant of the county auditor. * *”

Section 2786 of the General Code, provides:

“The county surveyor shall keep his office at the county seat in such room or rooms as are provided by the county commissioners, which shall be furnished, with all necessary cases and other suitable articles, at the expense of the county. Such office shall also be furnished with all tools, instruments, books, blanks and stationery necessary for the proper discharge of the official duties of the county surveyor. The cost and expense of such equipment shall be allowed and paid from the general fund of the county upon the approval of the county commissioners. The county surveyor and each assistant and deputy shall be allowed his reasonable and necessary expenses incurred in the performance of his official duties.”

Section 2981 of the General Code, provides in part, as follows:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury upon the warrant of the county auditor. * *”

From an examination of the above statutes, it is apparent that the entire cost of the office of county engineer is to be paid from the general county fund and no authority exists for such payment, in whole or in part, from any special fund, established from the proceeds arising from a special levy. *Cincinnati vs. Longworth*, 34 O. S., 101, Opinions of the Attorney General for 1919, page 955 and Opinions of the Attorney General for 1918, page 103.

A question arises as to whether or not a transfer could be made from the special road levy created under the provisions of Section 5625-15 of the General Code, to the general fund of the county.

Authority to transfer from one fund to another, under certain circumstances, is set forth in Section 5625-13, of the General Code. From an examination of this section, it is apparent that no authority exists in the instant case for a transfer from a special road tax levy fund to the general county fund for the reimbursement of the expenses incurred by the county engineer's office in connection with

such road improvement. See Opinions of the Attorney General for 1927, page 2299, for 1928, page 1278, for 1930, page 1030, and for 1931, page 3682.

It should also be noted that Article XII, Section 5, reads:

“No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.”

Section 5625-15, *supra*, to which you refer, reads in part, as follows:

“The taxing authority of any subdivision at any time prior to September 15th, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

1. Current expenses of the subdivision.

* * * *

7. For the general construction, reconstruction, resurfacing and repair of roads and bridges in counties.

Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year. * * The

Under the above section, since bonds may only be issued for a single purpose, and in this situation the levy was made for road construction, it follows that the proceeds from such levy could not be used for the first purpose set forth in such section, namely, the payment of the current expenses of the subdivision, among which expense would be the operating cost of the office of the county engineer, which expense would include its cost in connection with road improvements.

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that the expense of the county surveyor and his office, in connection with the cost of the construction of a road improvement, are to be paid from county general funds and such cost cannot be proportioned and paid from the proceeds of a special road tax levy authorized by Section 5625-15 et seq., of the General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.