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COUNTY COMMISSIONERS — CANNOT AUTHORIZE PAYMENT EXPENSES COUNTY ENGINEER—ATTENDANCE, OHIO GOOD ROADS FEDERATION—MAY ONLY BE PAID EXPENSES TRIP, PERFORMANCE DUTY ENJOINED BY LAW—MUST SHOW DUTY WHERE COUNTY HAS DEFINITE, DIRECT, BENEFICIAL INTEREST.

SYLLABUS:

1. *County commissioners can not authorize payment of expenses incurred by a county engineer for purposes of attending a meeting of the Ohio Good Roads Federation.*
2. *A county engineer can only be paid for expenses on trips where it is definitely shown that he was performing a duty enjoined by law, or where it is shown that said trips were necessary and in the performance of a duty in which the county had a definite, direct and beneficial interest.*

COLUMBUS, OHIO, March 8, 1939.

HONORABLE NORTON C. ROSENTRER, *Prosecuting Attorney, Ottawa County, Port Clinton, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“I shall be pleased to have your opinion concerning the following situation, and this inquiry is made at the request of the County Engineer, who states as follows:

"The Ohio Good Roads Federation has notified our County Engineer that there will be a meeting of County Engineers and County Commissioners at Columbus for the discussion of operating and legislative problems. At this meeting the Ohio State County Engineers Association will also meet and discuss matters of importance to the Engineers and the several Counties.

"It is furthermore deemed advisable by our County Engineer to personally contact various public offices in Columbus, Toledo, Bowling Green and other cities within the state in the interest of county business.

"Can the Board of County Commissioners authorize payment of expenses incurred by the County Engineer on trips such as mentioned above and is there any way in which the County Engineer can be indemnified for expense so incurred?"

Your first query involves a question asked frequently of this office, and it becomes necessary to determine whether such an expenditure comes within the test and rule laid down in many opinions, to the effect: Was the engineer in this instance acting in the performance of a duty enjoined by law, or was he acquiring general information which, gleaned therefrom, would redound personally to the individual and only incidentally to the general public?

There is an absence of any statutory authority for the expenditure of monies for such a purpose as outlined in your first query, and it is necessary to examine the decisions of the court and the opinions of this office. The courts have jealously guarded public funds and have held at all times against the right to expend monies for traveling expenses for public officials acquiring general knowledge, to some extent, in the performance of public duties. There is dicta to that effect in the following cases: *Richardson vs. State, ex rel. Prosecuting Attorney*, 66 O. S., 108; *Clark vs. County Commissioners of Lucas County*, 58 O. S., 107. As to the opinions of this office, there are several, and I am adopting the most recent, issued by my predecessor on January 13, 1938, and numbered 1757, to the effect that unless attendance at such meetings outside the county be for a definite, contemplated undertaking, and not for the purpose of acquiring a general education and ideas for the office, an official's expenses can not be paid out of county funds.

I am therefore constrained to advise you that I am of the opinion that while the purpose of said trip and the meeting itself are commendatory, I feel that the circumstances set forth do not create such a special purpose as to escape the rule laid down, and I am therefore of the opinion that the expense of the county engineer on this trip to Columbus at the request of the Ohio Good Roads Federation for a meeting of county engineers and county commissioners, can not be paid out of public funds.

In regard to your second query, I am unable to elicit any information

from your communication as to the exact nature, or the definite purposes of the trips taken by the county engineer, and while I do not desire to curtail the activities and duties of any public official in the performance of his office, nevertheless in order that the county engineer may be reimbursed for traveling expenses, as in this instant case, it must very definitely be made to appear that the trips were absolutely necessary and were in the performance of a duty enjoined by law, or were in the performance of a duty in which the county had a definite, direct and beneficial interest.

It is therefore my opinion, in the absence of such definite facts setting forth the particular purposes and nature of these trips, that the county engineer can not be reimbursed for the trips which the county engineer deemed advisable to make.

Very truly yours,
THOMAS J. HERBERT,
Attorney General.