

This is a sufficient compliance with the provisions of Section 2288-2, General Code.

This lease is accordingly approved by me, and the same is returned herewith.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1120.

COUNTY ENGINEERS — DUTIES — IMPROVEMENTS, ROADS AND BRIDGES—WPA PROJECTS—SALARIES PAYABLE FROM COUNTY GENERAL FUND OF ASSISTANT ENGINEERS, ENGINEERING CLERKS, INSTRUMENTMEN, RODMEN, ETC.—TAX: MOTOR VEHICLE FUEL: MOTOR VEHICLE LICENSE—APPORTIONMENT ALLOTTED APPROPRIATION—BOARD OF COUNTY COMMISSIONERS.

**SYLLABUS:**

1. *Under the provisions of Section 2792, General Code, the county engineer is required to perform all the engineering duties in connection with the improvements of roads and bridges as WPA projects being constructed in such county.*

2. *The salaries of assistant engineers, engineering clerks, instrumentmen, rodmen, etc., employed by the county engineer, are payable from the county general fund, whether they are assigned to regular county duties or are engaged in engineering work in connection with a WPA highway improvement.*

3. *By reason of the provisions of Section 2782-2, General Code, when it becomes effective, two-thirds of the amount appropriated by the board of county commissioners for the operation of the county highway engineer's office is payable from funds allotted to the county from the proceeds of the motor vehicle license tax and the motor vehicle fuel tax and the remainder from the general fund of the county.*

COLUMBUS, OHIO, August 31, 1939.

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR: Your request for my opinion reads:

"A difference of opinion has arisen in the County between the County Commissioners and the County Engineer in regards to the responsibility of the County Engineer for engineering on WPA projects, and regarding the source of the pay for the As-

sistant Engineer, Instrumentmen, Rodmen, etc., employed by the Engineer on WPA projects. We, therefore, wish your opinion on the following questions:

1. Are WPA projects for the building of bridges, improving of roads, roadside drainage, etc., public improvements within the meaning of Section 2792 of the General Code, or any other section concerning the duties of the County Engineer?

2. Is the necessary engineering, surveying, preparing of plans, specifications, details, estimate of costs, forms of contracts, schedules, etc., in connection with the preparation of and construction of WPA projects, a part of the duties of the County Engineer as defined by various statutes of the General Code?

3. If it is the duty of the County Engineer to furnish the engineering on WPA projects, as set forth in questions one and two herein, what is the legal method of payment and from what public funds should the salary or wages of such Assistant Engineers, Engineering Clerks, Instrumentmen, Rodmen, etc., employed by the County Engineer in the performance of the duties in connection with his office as County Engineer, and working on such WPA projects, be paid?

4. Will your answer to question number three herein, as to the method of payment of the Assistant Engineer, Instrumentmen, Rodmen, etc., working on WPA projects, or the fund from which they are to be paid, be the same when Section 2782-2 becomes effective, September 6, 1939?

As the payroll for about fifty men has been held up pending this decision it is very imperative that the decision be made immediately. I would appreciate it therefore if we could have your opinion within a couple of weeks.

I am enclosing herewith a list with citations of sections of the General Code, cases and opinions of the Attorney General which may be of some aid to you. Special attention is directed to Section 2981 of the General Code and its application to question number three herein."

Section 2792, General Code, referred to in your inquiry, reads:

"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. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction or repair of all bridges, culverts, roads, drains, ditches and other public improvements, except buildings,

constructed under the authority of any board within and for the county. When required by the county commissioners, he shall inspect all bridges and culverts, and on or before the first day of June of each year report their condition to the commissioners. Such report shall be made oftener if the commissioners so require: Provided, the county surveyor shall not be required to prepare plans, specifications, details, estimates of costs or forms of contracts for emergency repairs authorized under § 2792-1 of the General Code, unless he deems them to be necessary."

By reason of the provisions contained in Section 2782-1, General Code, the term "county surveyor," as used in such section and other sections of the General Code, referred to herein is synonymous with the term "county engineer."

It has been consistently held that the construction and the maintenance of serviceable roads is a public improvement. *Memphis and Charleston Railway Company v. Pace*, 282 U. S., 241; *Missouri Pacific Railroad Company v. Western Crawford Road Improvement Company*, 266 U. S., 187. The term "public improvement" is an ordinary expression having a common meaning of an addition of property and/or labor to property owned or held for public use with a view to increasing the value or benefits thereof to the public. The context in which it is used indicates that the term was used by the legislature in its ordinary meaning rather than a technical one.

The duties of the county engineer with reference to public improvements is limited by the language, "constructed under authority of any board within and for the county," contained in Section 2792, General Code. It has been held that the county engineer is not required, by Section 2792, General Code, to prepare plans and specifications, etc., for all road improvements; that it is only in cases where the board of county commissioners has deemed it necessary that he furnish such services that they are so required to be furnished. *Hibbard v. Biddle*, 81 U. S., 181.

If then the Works Progress Administration improvements are being made under authority of any board within and for the county, and plans and specifications or other engineering services are deemed by the board of county commissioners to be necessary for such purpose, it is evident that it is the duty of the county engineer to furnish such services.

Section 2793, General Code, further provides duties. This section reads:

"The county surveyor shall be responsible for the inspection of all public improvements made under authority of the board of county commissioners. He shall keep in suitable books a complete record of all estimates and summaries of bids received and contracts for the various improvements, together with the record of all estimates made for payments on the work.

He shall make all surveys required by law to be made and perform all necessary services to be performed by a surveyor or civil engineer in connection with the construction, repair or opening of all county roads, turn pikes, or ditches constructed under the authority of the board of county commissioners and shall perform such other duties as such board from time to time requires."

Section 7184, General Code, further describes the duties of a county engineer. Such section reads:

"The county surveyor shall have general charge of the construction, reconstruction, improvement, maintenance and repair of all bridges and highways within his county under the jurisdiction of the county commissioners. The county surveyor shall also have general charge of the construction, reconstruction, resurfacing or improvement of roads by township trustees under the provisions of sections 3298-1 to 3298-15n inclusive of the General Code. The county surveyor shall have general charge of the construction, reconstruction, resurfacing or improvement of the roads of a road district under the provisions of sections 3298-25 to 3298-53 inclusive of the General Code. The county surveyor shall not be authorized, however, to perform any duties in connection with the repair, maintenance or dragging of roads by township trustees, except that upon the request of any board of township trustees he shall be required to inspect any road or roads designated by them and advise them as to the best methods of repairing, maintaining or dragging the same."

An examination of the statutes authorizing the federal government to cooperate on WPA county highway projects, and regulations issued pursuant thereto indicate that such improvements can only be undertaken and performed when the authority of the board of county commissioners has been obtained. It would therefore seem to be the statutory duty of the county engineer to perform the engineering services in connection therewith.

You inquire as to the fund from which various assistants and aids of the county engineer may be paid whether on regular duties or when performing services on Works Progress Administration improvements.

Section 2411, General Code, grants authority to employ assistants and aids for the county engineer. Such section reads:

"When the services of an engineer are required with respect to roads, turnpikes, ditches or bridges, or with respect to any other matter, and when, on account of the amount of work

to be performed, the board deems it necessary, upon the written request of the county surveyor, the board may employ a competent engineer and as many assistant engineers, rodmen and inspectors as may be needed, and shall furnish suitable offices, necessary books, stationery, instruments and implements for the proper performance of the duties imposed on them by such board."

Section 2413, General Code, provides the method of compensating such employes for their services and reads:

"The board of county commissioners shall fix the compensation of all persons appointed or employed under the provisions of the preceding sections, which, with their reasonable expenses shall be paid from the county treasury upon the allowance of the board. No provisions of law requiring a certificate that the money therefor is in the treasury shall apply to the appointment or employment of such persons."

The question as to the method of paying such assistants when the salary fund of the county engineer was insufficient, was presented to one of my predecessors in office. Such Attorney General ruled that when the salary fund of the county engineer was insufficient to pay the compensation of the necessary assistants of such engineer, they may be paid from the county general fund. Opinions of the Attorney General, 1931, Vol. I, page 47.

Later, in Opinions of the Attorney General for 1932, Vol. I, page 352, a predecessor ruled:

"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."

Similar views were expressed by Attorneys General in Opinions of the Attorney General for 1935, Vol. I, page 424; Opinions of the Attorney General for 1919, Vol. I, page 955.

It seems that the statute recognizes but one source for the payment of the compensation of the aids and assistants of the county engineer regardless of the type of county service which they are called upon to perform. It is elemental that a public official may be compensated only as provided by statute.

You next inquire as to the effect of Section 2782-2, General Code,

as to the fund from which such payments shall be made, when it becomes effective on September 6, 1939. Such section reads:

“Two-thirds of the cost of operation of the office of county engineer, including the salaries of all of the employes thereof and the cost of the maintenance thereof as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county’s share of the fund derived from the receipts from motor vehicle licenses as distributed by section 6309-2 of the General Code, and from the county’s share of the fund derived from the motor vehicle fuel tax as distributed by section 5541-8 of the General Code.”

The language of such section is unambiguous. Such section provides that two-thirds of the amount appropriated by the board of county commissioners for the cost of operation of the office of county engineer shall be paid from funds received by the county from the state as its share of the motor vehicle license tax and the motor vehicle fuel tax. The remaining portion will be payable from the county general fund as at the present time.

Specifically answering your inquiry, it is my opinion that:

1. Under the provisions of Section 2792, General Code, the county engineer is required to perform all the engineering duties in connection with the improvements of roads and bridges as WPA projects being constructed in such county.

2. The salaries of assistant engineers, engineering clerks, instrumentmen, rodmen, etc., employed by the county engineer, are payable from the county general fund, whether they are assigned to regular county duties or are engaged in engineering work in connection with a WPA highway improvement.

3. By reason of the provisions of Section 2782-2, General Code, when it becomes effective, two-thirds of the amount appropriated by the board of county commissioners for the operation of the county highway engineer’s office is payable from funds allotted to the county from the proceeds of the motor vehicle license tax and the motor vehicle fuel tax and the remainder from the general fund of the county.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*