

Specifically answering your first question, therefore, it is my opinion that, in view of the provisions of Section 1579-631, General Code, to the effect that the bailiff of the Municipal Court of Lorain shall receive, in addition to his compensation, his actual expenses incurred in serving process of the court from the city treasury, such section fixing the maximum thereof at \$40.00 per month, such bailiff is not entitled to receive from the county treasury, expenses incurred in serving process of such court in state cases.

As provided by Section 1579-630, supra, every police officer of the city of Lorain shall be *ex-officio* a deputy bailiff of the Municipal Court and the chief of police is authorized to assign one or more such police officers from time to time to perform such duties in respect to cases within the jurisdiction of such court as may be required of them by said court or the clerk thereof. When so assigned such police officers, inasmuch as they are wholly salaried minor court officers, are by the terms of Section 3017, supra, entitled to receive, in state cases, from the county treasury the actual necessary expenses incurred by them in executing warrants to arrest, orders of commitment or other process and in like manner such expenses incurred by such officers shall be paid from the municipal treasury, when incurred in ordinance cases.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2660.

COUNCIL—VILLAGE—MAY EMPLOY ENGINEERING FIRM FOR IMPROVEMENTS.

*SYLLABUS:*

*A firm of engineers may be employed by a village council to do all engineering work in connection with village improvements.*

COLUMBUS, OHIO, October 1, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication, which reads as follows:

“Section 4364, G. C., provides for the employment of an engineer in villages.

In Opinion No. 2951, dated November 1, 1925, the Bureau was advised that a village engineer is an officer of the corporation.

QUESTION: May a firm of engineers be employed to do all engineering work for a village?”

The pertinent provisions of the code applicable to your question are Sections 4363 to 4366, inclusive, which sections are as follows:

Section 4363. “The street commissioner shall be appointed by the mayor and confirmed by council for a term of one year, and shall serve until his successor is appointed and qualified. He shall be an elector of the corporation. Vacancies in the office of street commissioner shall be filled by the mayor for the unexpired term. In any village the marshal shall be eligible to appointment as street commissioner.”

Section 4364. "Under the direction of council, the street commissioner, or an engineer, when one is so provided by council, shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wards, landings, market houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship channels, streams, and water courses. Such commissioner or engineer shall also supervise the lighting, sprinkling and cleaning of all public places, and shall perform such other duties consistent with the nature of his office as council may require."

Section 4365. "Such street commissioner or engineer shall have such assistants as council may provide, who shall be employed by the street commissioner and shall serve for such time and for such compensation as is fixed by council."

Section 4366. "In each municipal corporation having a fire engineer, civil engineer or superintendent of markets such officers shall each perform the duties prescribed by this title and such other duties not incompatible with the nature of his office as the council by ordinance requires, and shall receive for his services such compensation by fees, salary or both as is provided by ordinance."

As you state, Section 4364, supra, authorizes the appointment of a village engineer, but such appointment is optional with council. There is no definite obligation placed upon the council to so provide, and, in the event no provision is made, it is apparent that the street commissioner is to perform the duties otherwise vested in the engineer. Those duties include the matters mentioned in Section 4364, and, in general, may be stated to be of a supervisory character.

From the form of your inquiry, it is not clear just what "all engineering work" comprehends. I assume that this has reference to the engineering in connection with the construction of specific improvements undertaken by the village. There is no definite obligation placed upon the street commissioner to do this work, although he is authorized to employ assistants, as council may provide, by the provisions of Section 4365 of the code, supra. I do not feel, however, that the duty of supervision imposed by Section 4364 of the code upon either the street commissioner or the engineer necessarily comprehends the actual performance of engineering service in connection with village improvements. It does not, however, preclude the performance of such engineering service by such officials if they have the ability and assistants so to do and the council requires the performance of such service. I feel that this does not militate against the right of council, in the exercise of the discretion vested in it, to employ by contract others to perform this service, so long as the supervision of the improvement remains in the officials of the village; that is, either the street commissioner or the engineer. The line of demarcation between supervision and engineering work is clear, and I am of the opinion that the council of a village has the authority to make a contract for engineering services, which contract would be in no way trespassing upon the functions of the village officials in question.

I am not unmindful of the opinion to which you refer, holding that a village engineer is an officer of the corporation. This holding is undoubtedly correct in the event that the office of engineer is created by action of council and an appointment made thereto. In such an event the engineer is clearly an officer of the village, and, as such, cannot be interested in contracts with the village, as set forth in the opinion to which you refer.

There is, however, a clear distinction between an officer and one who is employed merely by contract to do engineering work. In the present case, there is no requirement that an engineer be appointed, and, as before stated, engineering work may be the subject of contract by the village council. If such be the case, it is immaterial whether that contract be with a person, firm or corporation.

In passing, I may call your attention to Opinion No. 1896, dated March 26, 1928, and addressed to your office, in which you were advised that a contract with a firm of engineers for engineering services was not invalid. That contract was entered into by a village and the discussion in that opinion is pertinent to the question you now present. It is, however, needless for me to reaffirm the statements therein contained.

Specifically answering your inquiry, I am of the opinion that a firm of engineers may be employed by a village council to do all engineering work in connection with village improvements.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2661.

CROSSING—SEPARATED—NO AUTHORITY FOR DIRECTOR OF HIGHWAYS TO RECONSTRUCT UNDER SECTION 1229-19, GENERAL CODE—REQUIREMENTS FOR APPLICATION OF SAID SECTION, DISCUSSED.

*SYLLABUS:*

*Section 1229-19 of the General Code does not authorize the director of highways to relocate and reconstruct or widen, reconstruct or realign a separated crossing, which was not constructed under and in accordance with the provisions of Sections 8863 to 8894, or Sections 6956-22 to 6956-39 of the General Code, where it is not proposed to relocate and reconstruct such crossing in whole or in part without the right of way of the state highway, or where the highway was in existence prior to the railway.*

COLUMBUS, OHIO, October 1, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as to whether or not, under the provisions of Section 1229-19, General Code, you may initiate proceedings to cause the reconstruction of an underpass in State Highway 553, which causes the tracks of the Akron, Canton and Youngstown Railway Company to pass over said state highway, a short distance north of Wadsworth, in Medina County, Ohio. Your communication reads as follows:

“The possibility of reconstructing the above underpass (Medina County, S. H. 553, A. C. & Y. Underpass North of Wadsworth) has been brought to my attention, but before proceeding further with the project, I desire that you advise me whether or not I have the authority to initiate proceedings under Section 1229-19 to bring this about.

The present highway passes under an old wooden trestle of the Akron, Canton and Youngstown Railway Company, which provides but 11.19 feet of vertical clearance and 18 feet of lateral clearance. It is proposed to depress the highway and elevate the railroad tracks to obtain 14 feet of vertical clearance and widen the present opening to provide 24 feet of lateral clearance for the highway. If it can be legally done, we propose to allot 25% of the cost to the State, 25% to Medina County and 50% to the Railway Company.