

5261

1. ENGINEER, PRIVATE SANITARY—MAY BE EMPLOYED TO ASSIST IN LAYOUT OF SEWER DISTRICTS AND CONSTRUCTION OF SEWAGE WORKS—WORK NOT ENCOMPASSED WITHIN DUTIES OF COUNTY ENGINEER—CHAPTER 6117. RC.
2. COUNTY ENGINEER IN COUNTY, POPULATION 30,000 OR LESS MAY ACCEPT PRIVATE EMPLOYMENT—MAY NOT INTERFERE WITH OFFICIAL DUTIES—MAY BE EMPLOYED IN PRIVATE CAPACITY BY BOARD OF COUNTY COMMISSIONERS—SECTION 6117.01 RC.

SYLLABUS:

1. Chapter 6117, Revised Code, contemplates the employment of a private sanitary engineer to assist in the layout of sewer districts and construction of sewage works, and such work is not encompassed within the duties incident to the office of county engineer.
2. A county engineer holding office in a county having a population of thirty thousand or less may accept private employment to the extent that it does not interfere with his official duties, and if a competent sanitary engineer he may be employed in his private capacity as such by a board of county commissioners in accordance with the provisions of Section 6117.01, Revised Code, and may be compensated therefor in the manner provided for by Chapter 6117, Revised Code.

Columbus, Ohio, May 26, 1955

Hon. Sumner J. Walters, Prosecuting Attorney
Van Wert County, Van Wert, Ohio

Dear Sir :

I have before me your request for my opinion, which reads as follows :

“Revised Code, Section 6117.01, provides for employment of a competent sanitary engineer by the county commissioners in connection with sewer districts. Would you please let us have your opinion as to :

“1. Whether or not the Commissioners of the county may employ the county engineer if a competent sanitary engineer and compensate him for his duties in connection with sewer districts in addition to his compensation as county engineer.

“2. If the answer to question 1 is in the negative, is the county engineer required as such to perform the duties required by a sewer district if said county engineer is also a competent sanitary engineer, and whether or not such duties are a part of his duties as county engineer.”

Section 6117.01, Revised Code, authorizes a board of county commissioners to lay out, establish and maintain one or more sewer districts within their county for the purpose of preserving and promoting the public health and welfare, and authorizes the board to employ a competent sanitary engineer to assist in the making of a survey and in the construction of a sewage works. The sanitary engineer may be employed “for such time and on such terms as it (the board of county commissioners) deems best.”

The basic questions presented by your inquiry are whether a county engineer may be required to perform the work of a sanitary engineer, described in Chapter 6117., as a part of his official duty, or if not so required, whether he is prohibited from performing this work in his private capacity as a sanitary engineer.

Section 315.08, Revised Code, defines the duties of a county engineer and provides in part as follows :

“The county engineer shall perform for the county all duties 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 contract for the construction, maintenance and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county. * * *

It would appear from a reading of this section that a county engineer has included among his duties the preparation of plans, specifications, details, etc., for all public improvements, "except buildings, constructed under the authority of any board within and for the county," and that such duties might be considered to include the construction of sewage works prescribed by Chapter 6117., Revised Code.

Chapter 6117., Revised Code, however, describes in detail the engineering work to be performed in connection with sewer districts, and in no instance is reference made to the county engineer. On the contrary, Section 6117.01 authorizes the employment of a "sanitary engineer," and subsequent sections within the chapter provide that the work is to be performed by such "sanitary engineer."

Section 6117.06 e.g., provides in part :

"After the establishment of any sewer district the board of county commissioners shall have prepared by the county *sanitary engineer* a general plan of sewerage and sewage disposal for such district, as complete as can be made at that time. After such general plan has been approved by the board, it shall have prepared by the *sanitary engineer* detailed plans, specifications, and estimates of cost of such parts of the improvement as it is necessary to then construct, together with a tentative assessment of the cost based on such estimate. * * *

(Emphasis added.)

It is a well settled rule of statutory construction that a special statute, concerned with a particular subject matter, will control over a general statute with which there is an apparent conflict. The special statute will be considered as an exception to the general statute. *State ex rel Steller v. Zangerle*, 100 Ohio St., 414.

Whereas Section 315.08, Revised Code, which defines the duties of the county engineer, is concerned with proposed construction within the county of a general nature, Chapter 6117., Revised Code, pertains to a specific improvement, viz., the construction of sewage works. The provisions of this latter chapter will therefore be considered to control and to give a limiting effect to general provisions of the former.

As already indicated, all work of an engineering nature authorized by Chapter 6117. is authorized to be performed by a "sanitary engineer." These specific references to a "sanitary engineer" would be wholly unnecessary if the legislature had intended that the county engineer should perform these services. Effect must be given, whenever possible, to all words used in a statute. "It is to be assumed, or presumed, that the legislature used the language contained in a statute advisedly and intelligently." 37 Ohio Jurisprudence, 510, Section 276. It must be considered, therefore, that if the legislature had intended the county engineer to perform these services it would not have made this specific reference to a "sanitary engineer."

This position is further supported by reference to Section 6117.25, Revised Code, which provides in pertinent part as follows:

"The board of county commissioners may pay the whole or any part of the cost of constructing, maintaining, repairing, or operating any improvement provided for in sections 6117.01 to 6117.45, inclusive, of the Revised Code, including the payment of a county sanitary engineer and his assistants and other necessary expenses. * * *"

Here, again, the above allowance for payment of a sanitary engineer would have no meaning if it were incumbent upon the county engineer to perform the services under consideration as a part of his official duty, and thus without additional compensation.

I therefore conclude that the legislature intended the employment of a private sanitary engineer for the purposes described in Chapter 6117., Revised Code, and that the engineering work to be performed thereunder is not included within the duties of the county engineer.

Your inquiry raises the further question of whether a county engineer may accept private or public employment in addition to the duties required to be performed by him in his official capacity.

It was held by one of my predecessors in Opinion No. 1231, Opinions of the Attorney General for 1937, page 2119, that a county engineer could not accept employment in addition to his official duties since he was required to devote his entire time and attention to the duties of his office. Former Section 7181, General Code, relied upon in that opinion, has since been amended, however, and is presently found in Section 325.14, Revised Code. This section provides for the compensation to be received by a county engineer, which compensation is determined in accordance with the population of the county served.

This section further provides :

“The engineer in counties having a population of over thirty thousand, as shown by the federal census next preceding his election, shall give his entire time and attention to the duties of his office.”

It may therefore be concluded that the engineer of a county having a population of thirty thousand or less is not required to devote full time and attention to the duties of his office and may accept private employment in addition thereto. Such private employment is, of course, limited to the extent that it cannot interfere with the proper exercise of official duty.

I see no further restriction which would prohibit the employment of the county engineer as a sanitary engineer by a board of county commissioners for the purposes stated in Section 6117.01, et seq., Revised Code.

Accordingly, in specific answer to your inquiry, it is my opinion that :

1. Chapter 6117, Revised Code, contemplates the employment of a private sanitary engineer to assist in the layout of sewer districts and construction of sewage works, and such work is not encompassed within the duties incident to the office of county engineer.

2. A county engineer holding office in a county having a population of thirty thousand or less may accept private employment to the extent that it does not interfere with his official duties, and if a competent sanitary engineer, he may be employed in his private capacity as such by a board of county commissioners in accordance with the provisions of Section 6117.01, Revised Code, and may be compensated therefor in the manner provided for by Chapter 6117.

Respectfully,

C. WILLIAM O'NEILL
Attorney General