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DRAFTSMEN—COUNTY ENGINEER MAY APPOINT SUCH NUMBER AS MAY BE NECESSARY TO MAKE, CORRECT AND KEEP UP TO DATE TAX MAPS—SALARIES OF ASSISTANTS—PAID OUT OF COUNTY TREASURY—APPROPRIATIONS MADE BY COUNTY COMMISSIONERS—SECTIONS 5551, 5552 G. C.

SYLLABUS:

In accordance with the provisions of Section 5552, General Code, the county engineer, subject to the approval of the county commissioners, may appoint such number of draftsmen as may be necessary for making, correcting and keeping up to date the tax maps required by Section 5551 of the General Code, and the salaries of such assistants shall be paid out of the county treasury pursuant to appropriations made by the county commissioners.

Columbus, Ohio, March 19, 1945

Hon. Robert M. Betz, Prosecuting Attorney
Gallipolis, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Sections 5549 and 5551 of the General Code of Ohio seem to indicate that the county commissioners may let a contract for the making of the county tax maps or may appoint the county surveyor (or engineer) to make such maps. Under the latter section the county engineer is authorized to employ not more than four assistants to aid in making, correcting and keeping such maps up to date.

Section 7181 of the General Code of Ohio directs that ‘The county engineer shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position.’ This section seems to repeal, by implication at least, Sections 5549 and 5551.

Inasmuch as there is a very active real estate market in this county, it seems to me that to keep these maps up to date and corrected would require the full-time service of an expert draftsman. Therefore, my question is whether or not the county engineer

has any authority to employ an assistant or assistants for this work, and whether or not the county commissioners would be authorized to make an appropriation to pay such assistants."

Sections 5549, 5551 and 5552, General Code, were originally known as Sections 2789, 2789a and 2789b, respectively, of the Revised Statutes. They form a part of the chapter providing the procedure for assessing real estate for taxation.

Section 5549, General Code, authorizes the county commissioners of any county in the year 1913, and every fourth year thereafter, to advertise for sealed proposals for the making of the necessary maps and plats to enable the assessors in the county or any district thereof to correctly appraise real estate.

As amended by the act of April 25, 1904 (97 O. L. p. 489), Sections 2789a and 2789b read:

Section 2789a: "The board of county commissioners may appoint the county surveyor, who shall employ such number of assistants as may be necessary, not exceeding four, to provide for making, correcting, and keeping up to date a complete set of tax maps of the county, and which maps shall show all original lots and parcels of land, and, also, all divisions, subdivisions and allotments of the same, together with the name of the owner of each original lot or parcel and of each division, subdivision or lot in the same; also, all new divisions, subdivisions or allotments made in the county; all transfers of property showing the lot or parcel of land transferred, the name of the grantee, and the date of the transfer, so that such maps shall furnish the auditor, for entering on the tax duplicate a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the board of equalization and the auditor, and shall be kept in the office of the county auditor."

Section 2789b: "The board of county commissioners shall fix the salary of the draftsman at not to exceed \$2,000.00 per year; they shall likewise fix the number of assistants not to exceed four, and fix the salary of such assistants at not to exceed \$1,500.00 per year. The salaries of the draughtsman and assistants shall be paid out of the county treasury in the same manner as the salary of other county officers are paid."

These sections were carried into the General Code without substantial change.

In 1917 Section 7181, which was a part of a general highway law and which dealt with the compensation of the county surveyor, was amended (107 O. L. 69) by inserting the following provision:

“The county engineer shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position.”

This, as will be noted, had the effect of repealing by implication that portion of Section 5551 which authorized the county commissioners to appoint the county surveyor as tax map draftsman, since the legislature by this later enactment expressly made him such officer. But the enactment of said Section 7181 did not have any other effect on Section 5551, General Code, and there was left with the county surveyor the duty to make and keep up the tax maps, and the authority to employ *not to exceed four* assistants for that purpose. Said Section 5551 has not been further amended. Section 5552, *supra*, also fixed the maximum compensation of the surveyor as such draftsman, and of his assistants, reiterating the limitation of the number of assistants to four.

From the setting of these statutes as a part of the procedure for assessing taxes, it seems to me quite clear that the “assistants” referred to were the assistant draftsmen who were required in making and keeping up the maps in question and that the term did not include the other clerks and assistants whom the county surveyor might be allowed by law for other departments of his office. Furthermore, the later amendment, to which I will refer, did not, in my opinion, change the scope of the section in question.

By an act passed February 4, 1920 (108 O. L. 1229), Section 5552 was amended to its present reading, *viz*:

“The county surveyor shall appoint such number of draughtsmen as may be necessary and fix the salary thereof, subject to the approval of the board of county commissioners.

The salaries of the assistants shall be paid out of the county treasury in the manner as the salary of other county officers are paid.”

This amendment of Section 5552, *supra*, certainly had the effect of doing away with the limitation of the number of assistant draftsmen who may be appointed for the purpose set forth in Section 5551. Section

5552, General Code, would seem to be complete in itself, without any resort to Section 5551, so far as concerns the appointment and compensation of such assistants. It expressly authorizes "such number of draftsmen as may be necessary." It appears further that both the number and the salary of these assistants are subject to the approval of the county commissioners.

We need only notice one other section of the General Code which may appear to have some bearing on the question submitted. Section 2981, General Code, which is found in the chapter dealing with salaries of all county officers, including the county surveyor, reads 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. * * *"

On February 4, 1920, that section was amended (108 O. L. 1203) to almost its precise present reading (the only subsequent change in 112 O. L. 107, being the change of the provision for payment of salaries from "semi-monthly" to "monthly"). By rather strange coincidence February 4, 1920, was the same day on which Section 5552, General Code, above quoted, was amended to its present reading. There is no conflict between the two sections. Both would apparently authorize the county surveyor (later known to the law as the county engineer) to appoint as many assistant draftsmen as he should find necessary, limited only by the amount of money made available by appropriation by the county commissioners. Section 5552, however, is special as relating to tax map draftsmen only, and, as already pointed out, these appointments and their salaries are subject to the approval of the county commissioners.

Sections 5551 and 5552, General Code, were under consideration by one of my predecessors, who held in an opinion found in 1917 Opinions of Attorney General, page 949:

“Under the new Highway Act, which becomes effective on June 28, 1917, the assistants to the county surveyor as tax map draftsmen must be furnished and paid under the provisions of Sections 5551 and 5552, G. C., the provisions of the new act having no effect upon this matter.”

This holding was reiterated in 1917 Opinions of Attorney General, page 1264. In the course of the latter opinion it was said:

“In so far as his deputies are concerned for this position the provisions of sections 5551 and 5552, G. C., will control. If he needs a deputy in the performance of these duties, the county commissioners may fix the number and pay of the same, which is paid out of the county treasury, as other county officers are paid.”

These two opinions were quoted from at length with approval by a later Attorney General in 1919 Opinions of Attorney General, page 1283, who held:

“Tax map assistants employed under authority of sections 5551 and 5552, G. C., are not assistants or deputies within the meaning of the provisions of section 2786, G. C., for the allowance of expenses to assistants and deputies of the county surveyor.”

It is true that the three opinions above referred to were rendered prior to the amendment of Section 5552, General Code, but, as already indicated, I am of the opinion that that section still relates as it had always done, solely to assistants engaged in making and keeping up the county tax maps.

In specific answer, therefore, to your inquiry, it is my opinion that in accordance with the provisions of Section 5552, General Code, the county engineer, subject to the approval of the county commissioners, may appoint such number of draftsmen as may be necessary for making, correcting and keeping up to date the tax maps required by Section 5551 of the General Code, and the salaries of such assistants shall be paid out of the county treasury pursuant to appropriations made by the county commissioners.

Respectfully,

HUGH S. JENKINS

Attorney General