

functions of a village engineer or street commissioner, one so employed would not be an officer.

Based upon the foregoing citations and discussions, you are specifically advised that:

1. Whether or not one employed to perform engineering services for a village is an official depends upon the nature of the resolution fixing his employment and the character of the duties which he is to perform. In other words, it is a question of fact to be determined from all of the circumstances.

2. A firm of engineers may not be employed in such a manner that the individual members of the firm will be regarded as village officers. Section 4364 contemplates the employment of but one engineer as an official and it follows that a number of engineers could not be employed under the provisions of the section. However, in the event the council contracts with a firm to furnish certain engineering services, as distinguished from the supervisory duties of the official engineer, or the street commissioner, it is believed said action is within its powers.

Respectfully,

GILBERT BETTMAN,
Attorney General.

259.

EXPENSES—COUNTY COMMISSIONERS MAY BE REIMBURSED FOR HIRING SURVEYOR'S AUTOMOBILE TO ATTEND A HIGHWAY DIRECTOR MEETING—EXCEPTION—NO REFUND TO CLERK OF BOARD OF COMMISSIONERS AND SURVEYOR.

SYLLABUS:

1. *County commissioners are entitled to the reimbursement of expenses incurred for the hire of an automobile to transport them to a meeting called by the highway director, authorized by Section 1183-1 of the General Code, and it is immaterial whether they have the county surveyor or anyone else transport them, if such expenditure is actual and necessary. However, in counties where county commissioners have purchased automobiles in accordance with Section 2412-1, General Code, the county officials are required by Section 2412-2, General Code, to use these vehicles in lieu of hiring vehicles unless the county vehicles are not available.*

2. *The clerk of the board of county commissioners is not, by virtue of Section 1183-1, General Code, nor of Section 2786, General Code, entitled to reimbursement for expenses incurred in attending a meeting of district deputy directors and county commissioners, as authorized by Section 1183-1, General Code.*

3. *A county surveyor is not, by virtue of Section 1185-1, General Code, entitled to reimbursement for expenses incurred in attending a meeting of district deputy directors and county commissioners, as authorized by Section 1183-1, General Code.*

COLUMBUS, OHIO, April 3, 1929.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your letter of March 1, 1929, received by this office, is as follows:

“Will you kindly furnish me with an opinion on the following question:

Can an election county official legally charge for his services or for the use of his automobile in transporting other county officials to and from such meetings as they may attend in the legal discharge of their duties?

The transaction that prompts the submission of this question is as follows:

The county surveyor, the county commissioners and the clerk of the board of county commissioners of Portage County attended a meeting of the commissioners of Ohio with the highway director at Columbus, and obtained from the director a certificate of attendance. The expense bill was properly tendered and among the items was one for transportation which was for the same amount as the railroad fare from Ravenna to Columbus and return. The attention of the auditor was called to the fact that the trip was made in the car of the county surveyor, who, by an arrangement with the other members of the party, was to receive for the use of the car a sum equal to the railroad fare.

The auditor refused to pay this item of expense, it being in his opinion an illegal expenditure of county funds. The question arises as to whether or not he was justified in refusing to pay this item of expense."

It appears to me, from an examination of the facts as related by you, that this question is presented: Have the county commissioners and the clerk of the board of county commissioners authority to charge the county, as expense, a sum equal to railroad fare charged by a surveyor for transporting them to and from meetings attended by them in the legal discharge of their duties?

In view of the fact that you say that the board of county commissioners and the clerk attended a meeting of county commissioners with the highway director, I assume that the meeting was such as is authorized by Section 1183-1 of the General Code of Ohio. County commissioners attending meetings called by the highway director, by virtue of Section 1183-1, are allowed their actual and necessary traveling expenses. The only limitation on such traveling expenses is that they must be actual and necessary. The statutes of Ohio do not expressly limit the method or means by which a commissioner may travel. Inasmuch as the expense must be necessary, however, it must be presumed that the most economical method of transportation will be utilized except in exceptional circumstances. Ordinarily, transportation by way of railroad or other common carrier is the most economical method and, if this kind of transportation is accessible, the expenditure of more money for automobile hire would scarcely be justifiable or necessary. Whether or not the hiring of an automobile by a county commissioner or the use of his own conveyance would be proper, is a question which must be determined upon the particular facts. It should be borne in mind that in counties where county commissioners have purchased motor vehicles for their use, Section 2412 of the General Code requires the use of such vehicles in lieu of hiring vehicles, except where the county vehicles are not available. If a county commissioner chooses to hire an automobile under facts which warrant such a hiring, it is immaterial from whom he hires it, whether it be the surveyor or any one else, and he is entitled to be reimbursed for such expense as is necessary.

As I have before stated, it would undoubtedly be unreasonable and not necessary to hire a motor vehicle where other more economical methods of transportation are accessible under all circumstances, and by this I mean that there may be instances in which the saving of time incident to the use of a motor vehicle will outweigh the added expense incident to its hire.

In this instance, however, the charge is based upon the same amount which would have been expended had transportation been made by railroad. Inasmuch as there would be the undoubted right to go by railroad and have such expense reimbursed, I see no objection to the reimbursement of the commissioner for this expense, although in fact transportation was effected by other means, so long as the expenditure is actually made by the commissioner and is not in excess of the railroad fare.

It also appears from your letter that the clerk of the board of county commissioners attended the meeting. Section 1183-1 of the General Code of Ohio does not give authority to the state highway director to include the clerk of the board of county commissioners in his call for meetings. While Section 2413, General Code, allows reasonable expenses to be paid to the clerk of the board, in view of the fact that the attendance of the clerk at the meeting of the highway commissioner is not authorized, there is no legal basis for the allowance of the expense of the clerk. In an opinion of the Attorney General, reported in Opinions of the Attorney General for the year 1920, Vol. I, page 30, it was held that deputy county surveyors are not, by virtue of Section 1185-1 of the General Code, nor of Section 2786 of the General Code, entitled to reimbursement for expenses incurred in attending a meeting of county surveyors called by the state highway director, as authorized by Section 1185-1, General Code, 108 O. L. Pt. 1, page 481.

I feel that the reasons given by my predecessor in that opinion apply equally as well to a clerk of the board of county commissioners as they do to deputy county surveyors.

Section 1183-1 of the General Code of Ohio does not authorize the state highway director to call county surveyors to attend conference or school, as provided in that section. While Section 1183, General Code, authorizes the appointment of county resident district deputy directors, yet when a surveyor is so appointed, Section 1183-1, General Code, deals with him not as a county surveyor but as a resident district deputy director of highways. Section 1183-1 does not provide for the payment of the expenses of resident deputy directors, as such, incurred by them in attending the conferences provided in that section. Therefore, a county surveyor, acting in the capacity of a resident district deputy director, is no more entitled to the reimbursement of expenses than any other resident deputy director. Section 1183-1, General Code, does not authorize a county surveyor in the performance of his duties as a county surveyor to attend a meeting called by the highway director by virtue of Section 1183-1, General Code, so, there being no legal basis for incurring expenses in traveling to such a meeting by a surveyor, as provided in Section 1183-1, General Code, he is not entitled to be reimbursed his expenses for traveling by the county.

I am of the opinion that county commissioners are entitled to the reimbursement of actual and necessary expenses incurred for the hire of an automobile to transport them to a meeting called by the state highway director, as authorized by Section 1183-1 of the General Code, and that it is immaterial whether they hire the county surveyor or anyone else to transport them. I am further of the opinion that a clerk of the board of county commissioners or a county surveyor is not entitled, by virtue of Section 1185-1 of the General Code, to be reimbursed for expenses incurred in attending a meeting of resident district deputy directors and county commissioners, as authorized by Section 1183-1, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

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AUDITOR—DEPARTMENT OF HIGHWAYS—UNDER CIVIL SERVICE
UNLESS EXEMPTED UNDER SUB-SECTION 8 OF SECTION 486-8,
GENERAL CODE.

SYLLABUS:

The Auditor of the Department of Highways appointed under Section 1181-1 of the General Code, is in the classified civil service of the State unless exempted there-