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COUNTY ENGINEER—MAY ACCEPT PRIVATE EMPLOYMENT WHICH IS COMPATIBLE AND DOES NOT INTERFERE WITH OFFICIAL DUTY—SECTION 325.14 RC, AS AMENDED.

SYLLABUS:

The requirement that a county engineer "shall give his entire time and attention to the duties of his office" having been entirely deleted from the provisions of Section 325.14, Revised Code, by the amendment of that section, effective October 11, 1955, such officers may accept compatible private employment to the extent that such employment does not interfere with the proper exercise of official duty.

Columbus, Ohio, June 28, 1956

Hon. Robert C. Carpenter, Prosecuting Attorney
Seneca County, Tiffin, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Former Ohio Revised Code Section 325.14 provided that in counties of over 30,000 population, the county engineer should give his entire time and attention to the duties of the office.

"Present Ohio Revised Code Section 325.14, which became effective October 11, 1955, does not contain this provision.

"Our County Engineer has asked that I request your formal opinion as to whether or not, after January 1, 1957, a county engineer in a county having a population of over 30,000 can perform work for private individuals and accept compensation.

"Putting it another way, is the office of county engineer a full time job after January 1, 1957?"

Section 325.14, Revised Code, as it existed prior to October 11, 1955, contained the following provision:

* * * "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." * * *

As you indicate, this provision was omitted from the statute in the

amendment of this section by the 101st General Assembly and no analogous provision was substituted for it.

The provision quoted above from Section 325.14, Revised Code, was originally enacted in 1951 in the amendment of former Section 7181, General Code (124 Ohio Laws, 419, 425). Prior to that amendment Section 7181, General Code, contained the following provision:

“The county surveyor shall give his entire time and attention to the duties of his office and shall receive an annual salary to be computed as follows: * * *”

The effect of the amendment of this section in the manner above noted was the subject of consideration in my opinion No. 5261, Opinions of the Attorney General for 1955, dated May 26, 1955. In that opinion I said:

“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.”

The amendment in question was thus regarded as partially removing the former inhibition against additional employment which applied to all county engineers, such inhibition being retained only as to a limited class of such officers, all other county engineers being authorized by implication to accept additional employment. By analogous reasoning the most recent amendment, by which a complete removal of the statutory inhibition was

effected, must be regarded as permitting by implication such additional employment by any county engineer to the extent that such employment does not interfere with the proper exercise of the duties of his office.

It should be borne in mind, of course, that the usual rules of conflict of interest would apply, and that no additional employment, either public or private, could be accepted where its nature is such that it is subordinate to or a check upon the office of county engineer, or where some contrariety or antagonism is involved. See 32 Ohio Jurisprudence, 908, 909, section 48; and Sections 2919.08 and 2919.09, Revised Code.

Because you do not indicate what, if any, particular additional employment is contemplated in the case before you, I am unable to answer your query in more specific terms.

Accordingly, in specific answer to your inquiry, it is my opinion that the requirement that a county engineer "shall give his entire time and attention to the duties of his office" having been entirely deleted from the provisions of Section 325.14, Revised Code, by the amendment of that section, effective October 11, 1955, such officers may accept compatible private employment to the extent that such employment does not interfere with the proper exercise of official duty.

Respectfully,

C. WILLIAM O'NEILL

Attorney General