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COUNTY SURVEYOR—EARNINGS OF DEPUTIES AND ASSISTANTS IN SAID OFFICE THROUGH EMPLOYMENT BY DIRECTOR OF HIGHWAYS AND PUBLIC WORKS AS SUPERINTENDENTS AND INSPECTORS ON STATE HIGHWAY CONSTRUCTION ARE NOT TO BE TREATED AS EARNINGS OF COUNTY SURVEYOR'S OFFICE.

Under the provisions of the act of February 4, 1920, 108 O. L. 1203, whereby among other things the office of the county surveyor was made subject to the same procedure as other county officers in the matter of allowance for office help (see repeal of sections 2787 and 2789 and amendment of sections 2977, et seq. in said act), the earnings of deputies and assistants in the office of the county surveyor through employment by the Director of Highways and Public Works as superintendents and inspectors on state highway construction are not to be treated as earnings of the county surveyor's office. The opinion of this department of date, June 2, 1916, Opinions of Attorney-General 1916, Vol. I, p. 965, is to be followed in the matter of adjustment of compensation for services by such deputies and assistants as such superintendents and inspectors.

COLUMBUS, OHIO, September 3, 1921.

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

GENTLEMEN:—You have submitted for the consideration of this department the following:

“We have had under consideration the proper method of handling the compensation of deputy county surveyors whose salaries are fixed upon an annual basis, payable monthly, as provided in section 2981 G. C. The following opinions from your department have dealt with this subject prior to the amendment of section 2980 and 2981 of the General Code:

- Opinions for 1916, Vol. I, p. 965;
- Opinions for 1918, Vol. I, p. 584;
- Opinions for 1920, Vol II, p. 943.

Since the amendment of sections 2980 and 2981 of the General Code so as to include the county surveyor with all other county officers in the matter of employment of assistants, deputies, etc., is it not possible to construe the law so that the amount of money received by a deputy when employed by the state highway department may be considered an earning of the surveyor's office, which is to be collected and paid into the county treasury to the credit of the general county fund as provided by section 2963 of the General Code? If the law will bear this construction it will greatly simplify the handling of this proposition in various counties.”

The opinion of this department last mentioned in your inquiry was issued September 1, 1920; and at that time the amendments of which you speak were already in effect and were noted in the opinion in question. The opinion was the result of an inquiry made by Hon. J. H. Fultz, prosecuting attorney, Lancaster, Ohio, in connection with questions submitted to him by his county surveyor; and in the course of the opinion the following language was used:

"The first question submitted by your surveyor refers in general terms to the services of assistants, deputies, etc., on state road work. It should be kept in mind in this connection that the surveyor in estimating the annual salary allowance, is concerned with the compensation of his deputies, assistants, etc., for the time required on state road work, to the extent only that the employes in question may be rendering service under the direction of the county surveyor. If such employes are temporarily engaged for purposes of superintendence and inspection of state road work during progress of construction, then their employment is under the state highway commissioner, and their compensation while so engaged is as a matter of practice taken care of through a pay-roll arrangement between state and county and is finally charged to specific improvements in proportion as state, county, township and property owners may be bearing the cost. Of course, the surveyor's allowance for salaries for employes is not to take into account the time that such employes are rendering service under the direction of the state highway commissioner; nor is the surveyor's salary fund to be charged with amounts that may be paid out by the county in connection with the pay-roll arrangement mentioned. A discussion of the distinction between engineering services in the making of preliminary plans and surveys, and services in supervision and inspection during progress of construction work is given in the previous opinion of this department last referred to (Op. 1918, Vol. I, p. 584)."

Re-consideration of the language quoted has resulted in the conclusion that the views expressed therein are correct and lead to a negative answer to your inquiry. In ordinary cases, the services rendered by deputies and assistants in the surveyor's office are of the same effect so far as the public is concerned as though rendered by the surveyor himself. In other words, it is only when the work of his office becomes so extensive that the surveyor cannot personally attend to it all, that he is justified in employing deputies and assistants. Hence, anything that accrues in the way of earnings through the services of those deputies or assistants as such may very properly be spoken of as an earning of the surveyor's office in the same sense as if the services of the surveyor himself had brought about the earnings. This principle, however, cannot be said to extend to the services involved in occasional employment by the director of highways and public works (as successor to the state highway commissioner), since persons engaged in the latter employment are for the time being deputies or assistants of such director, and not of the county surveyor.

While the construction suggested by you would no doubt result in simplifying compensation accounting, yet it is believed that the statutes will not bear that construction, and that the amendments you speak of do not have the effect of changing the method of adjusting compensation as set out in the opinion of this department first referred to in your letter.

Respectfully,

JOHN G. PRICE,
Attorney-General.