

Company should be allowed and the correction of its personal property assessment should be made in accordance with the prayer of that appeal.

Respectfully,
 JOHN G. PRICE,
Attorney-General

1140.

ROADS AND HIGHWAYS—DEPUTY COUNTY SURVEYORS NOT ENTITLED TO RE-IMBURSEMENT FOR EXPENSES IN ATTENDING MEETING OF COUNTY SURVEYORS CALLED BY STATE HIGHWAY COMMISSIONER.

Deputy county surveyors are not by virtue of section 1185-1 G. C. nor of section 2786 G. C. entitled to reimbursement for expenses incurred in attending a meeting of county surveyors called by the state highway commissioner as authorized by section 1185-1 G. C. (108 O. L. Part I, page 481).

COLUMBUS, OHIO, April 9, 1920.

HON. VICTOR L. MANSFIELD—*Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

“Herewith I am enclosing a copy of a notice sent to Mr. F. G. Blue, surveyor of Defiance county, Ohio, by Hon. A. R. Taylor, state highway commissioner. In connection with the same, I would like to have your opinion as to whether or not the deputies in the surveyor’s office are entitled to their necessary expenses attending the meeting called by the state highway commissioner? Three deputies from the county surveyor’s office attended this meeting and have filed statements for their necessary expenses in connection therewith, and the question has come up whether or not such expenses may be allowed by the county commissioners. I will kindly ask that you render an opinion covering this point.

The county surveyor also attended this meeting. You will observe that in the notice sent by the highway commissioner, he states that he would be pleased to have the chief road engineer of each department present at the meeting.”

With your letter you sent copy of the letter of the state highway commissioner directed to your county surveyor under date January 14, 1920, from which is quoted the following:

“As per authority given in Section 1185-1 of the General Code, I have decided to have a meeting of the county surveyors of the state on the evening of January 21, 1920. Also would be pleased to have the chief road engineer of each department present at the meeting.”

Said section 1185-1, as appearing in 108 O. L. Part I, at page 481, reads as follows:

“The state highway commissioner is authorized to call the county surveyors together once each year, for the purpose of conducting a conference or school in which the best methods of road building and other matters of interest may be discussed, and at which instructions may be given

to said county surveyors pertaining to their work, by the state highway commissioner, or by another person designated by him for that purpose. Nothing herein shall prevent the state highway commissioner from calling any county surveyor into a conference at any time for any purpose connected with his official duties, and such county surveyor shall receive his actual necessary expenses in addition to his salary in attending such school or conference. Instead of a conference or school, the state highway commissioner may hold conferences or schools in various sections of the state for the convenience of the surveyors in such sections."

It will be seen that this section does not give authority to the state highway commissioner to include deputy county surveyors in his call for the meeting,—the statute has reference only to a meeting of county surveyors; hence, so far as the meeting in question is concerned, there is no authority in said section 1185-1 for payment of the expenses of the deputy county surveyors in attending it, and if such authority exists at all it must be found elsewhere than in said section.

The only other provision of law which has been found having a bearing on the matter is section 2786 G. C., reading as follows:

"The county surveyor shall keep his office at the county seat in such room or rooms as are provided by the county commissioners, which shall be furnished, with all necessary cases and other suitable articles, at the expense of the county. Such office shall also be furnished with all tools, instruments, books, blanks and stationery necessary for the proper discharge of the official duties of the county surveyor. The cost and expense of such equipment shall be allowed and paid from the general fund of the county upon the approval of the county commissioners. The county surveyor and each assistant and deputy shall be allowed his reasonable and necessary expenses incurred in the performance of his official duties."

Is the last sentence of this section broad enough to vest in the county commissioners authority to allow the deputy surveyors their expenses incurred in attending the meeting you mention?

The general subject of payment of traveling expenses was dealt with at length in an opinion of this department (No. 85) of date March 1, 1919, copy of which is enclosed for your information. You will note that the general tenor of Ohio authority as summarized in said opinion is that public funds cannot be used for the payment of traveling expenses except in cases where the incurring and payment of such expenses are clearly authorized by statute. Possibly as clear an expression of the law as may be found in that connection is as set forth in the first paragraph of the syllabus in the case of Jones, Auditor vs. Commissioners, 57 O. S. 189, as follows:

"The board of county commissioners represents the county, in respect to its financial affairs, only so far as authority is given to it by statute. It may pass upon and adjudicate claims against the county for services in a matter, which, under the statutes, may be the subject of a legal claim against the county. But it is without jurisdiction to entertain or adjudicate claims which in themselves are wholly illegal and of such a nature as not to form the subject of a valid claim for any amount. And an attempt by the board to allow a claim of such character will not bind the county."

Recurring to the last sentence of section 2786 it is of course plain that there is a well defined field of official duties of deputy county surveyors. Their activi-

ties take them to all parts of the county, and in traveling about they are, of course, under an expense. There would seem to be little doubt that it is to such expenses as these that the sentence in question refers. Perhaps also the statute is broad enough to cover the expenses of a deputy surveyor incurred in a trip to Columbus if such trip is made at the request of the state highway commissioner in connection with a specific road improvement. (See Opinion November 3, 1917, Opinions of Attorney-General, 1917, Vol. III, page 2017). However, this last matter is mentioned only for purposes of illustration, and is not here passed upon. It is sufficient to say that we are not at liberty to put any broader construction upon the terms of section 2786 than fairly represents the intent of the legislature.

Under these circumstances, and in view of the fact that above quoted section 1185-1 mentions county surveyors only, the conclusion is inevitable that attendance at the meeting in question is not such an activity of the deputy county surveyors as would come within the performance of their official duties. This being true, there is no legal basis afforded the county commissioners for the allowance of such expenses.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1141.

AGRICULTURE—PENALTIES RECOVERED ON FORFEITED RECOGNIZANCES IN PROSECUTIONS BEGUN BY SECRETARY OF AGRICULTURE NOT SUCH MONIES AS ARE REQUIRED TO BE PAID TO SAID SECRETARY UNDER PROVISIONS OF SECTION 1177-14 G. C.

Penalties recovered on forfeited recognizances in prosecutions begun or caused to be begun by the secretary of agriculture are not such monies as are required to be paid to said secretary under the provisions of section 1177-14 G. C.

COLUMBUS, OHIO, April 9, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of the letter of recent date of J. P. Brennan, examiner for your department, requesting the opinion of this department, as follows:

“Section 1177-14 provides as follows:

‘All fines, fees and costs collected under prosecutions begun, or caused to be begun, by the secretary of agriculture, shall be paid by the court to the secretary of agriculture within thirty days after collection, unless error proceedings have been properly begun and prosecuted and in case the judgment of the justice of the peace is sustained the fine shall be paid within thirty days after such judgment or affirmance and by the secretary paid into the state treasury to the credit of the general revenue fund.’

I desire an opinion as to what disposition should be made by courts of the money recovered on forfeited bonds in cases brought or caused to be brought by the secretary of agriculture for violation of Ohio food, dairy and drug laws, also sanitary inspection, weights and measures, narcotic and cold storage laws.

Allow me to submit an example of such cases. On August 22, 1917, a representative of the board of agriculture, dairy and food division, filed