

1982.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN PICKAWAY
AND SHELBY COUNTIES.

COLUMBUS, OHIO, June 13, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contracts relating to the following improvements:

Section—"Circleville"
State Highway—5.
County—Pickaway.

Section—"Sidney Bridge"
State Highway—234.
County—Shelby.

Finding said contracts proper as to form and legality, I have accordingly endorsed my approval thereon and am returning the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1983.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS CHIEF OF THE DIVISION OF VITAL STATISTICS—
\$5,000.00—IRVA C. PLUMMER.

COLUMBUS, OHIO, June 13, 1930.

HON. CHARLES A. NEAL, *Director of Health, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond in the penal sum of \$5,000.00, upon which the name of Irva C. Plummer appears as principal and the Southern Surety Company of New York as surety. Said bond is conditioned to cover the faithful performance of the duties of the principal as Chief of the Division of Vital Statistics in your Department.

Finding said bond to have been executed in proper legal form, I have approved the same as to form, and return it herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1984.

CONSERVANCY DISTRICT—BOARD MEMBER MAY BE PAID ADDITIONAL
COMPENSATION FOR SERVING AS SECRETARY AND TREASURER—ALL MEMBERS ENTITLED TO PER DIEM, THOUGH
WORKING FRACTION OF DAY ONLY.

SYLLABUS:

1. *A member of the board of directors of a conservancy district, who is serving*

as secretary and treasurer of such district, may receive compensation for such services in addition to that provided by law for his services as director.

2. Under Section 6828-58, General Code, fixing a per diem compensation for members of the board of directors of a conservancy district, a director is entitled to such compensation for every day on which he performs substantial service, although the time actually consumed is merely a fraction of the day.

COLUMBUS, OHIO, June 13, 1930.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“Section 6828-58 of the General Code provides that each member of the board of directors of a conservancy district shall receive \$5.00 per day and his necessary expenses for the time actually employed in performing his duties.

Section 6828-9 G. C., provides that the board of directors shall elect some suitable person secretary, who may, or may not be a member of the board.

Section 6828-11 G. C., provides that the secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided for by the board, and this section further provides that employment of the secretary and treasurer for the district shall be evidenced by agreement in writing, which, so far as possible, shall specify the amount to be paid for his services.

Question 1. May one of the directors, who is acting as secretary and treasurer, receive compensation in addition to that provided by law for his services as director?

Question 2. Are members of the board entitled to the compensation fixed for each day, though the time employed each day may be only a few of the working hours of such day?”

The portions of Sections 6828-9 and 6828-11, General Code, referred to by you in your communication, and which are relevant to your first question, read:

Sec. 6828-9. “ * * * Upon taking the oath, the board of directors shall choose one of their number president of the board, and shall elect some suitable person secretary, who may or may not be a member of the board. * * * ”

Sec. 6828-11. “ * * * The secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided for by the board. * * * The employment of the secretary, treasurer, chief engineer and attorney for the district shall be evidenced by agreements in writing, which, so far as possible, shall specify the amounts to be paid for their services. * * * ”

It is quite evident that Sections 6828-9 and 6828-11, General Code, supra, when read together, permit a member of the board of directors of a conservancy district to also serve as secretary and treasurer. The wording of the part of the first statute quoted, is very similar to that of Section 4747, General Code, reading as follows:

“ * * * One member of the board (of education) shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. * * * ” (Italics and words in parenthesis the writer's.)

In an opinion, to be found in Annual Report of the Attorney General for 1911-1912, Vol. II, Page 1089, the then Attorney General had under consideration the italicized words in Section 4747, supra, and held, as disclosed by the first paragraph of the syllabus :

“Contrary to the general rule of policy that a member of a board may not hold a salaried position under such board, special provision of statute makes it possible for a member of a board of education to serve as its clerk, and receive the salary for both positions.”

In the body of said opinion, after quoting said Section 4747 and Section 4715 which provided compensation for a member of a township board of education, the Attorney General said :

“There is a principle of public policy which prohibits a member of an administrative board from holding a salaried position thereunder. This principle, however, is expressly waived, so to speak, by Section 4747, above quoted. The authority to prescribe compensation for the clerk is clearly vested in the board by Section 4781, General Code, which reads :

“The board of education of each school district shall fix the compensation of its clerk * * * which shall be paid from the contingent fund of the district. * * * ”

Reading all these sections together, I am of the opinion that the clerk of a township school district, who is also a member of the board of education, is entitled to the compensation prescribed by the statute as a member of the board of education, and in addition to the compensation prescribed by the board as clerk.”

To the same effect as the above opinion, is one reported in Annual Report of the Attorney General for 1912, Vol. II, Page 1776. The first branch of the syllabus in that opinion held :

“By specific provision of Section 4747, General Code, a member of a board of education may at the same time, act as its clerk and receive compensation for both services.”

On the strength of the reasoning in the above opinions, I am of the view that one of the directors of a conservancy board may act as secretary and treasurer and receive compensation from the board in addition to that provided by law for his services as director.

Coming now to your second question, Section 6828-58, General Code, which you mention in your letter, states, so far as pertinent :

“Each member of the board of directors shall receive five dollars a day and his necessary expenses for the time actually employed in performing his duties. * * * ”

In an opinion of the Attorney General reported in Annual Report of the Attorney General for 1912, Vol. I, Page 436, the then Attorney General had under consideration the language of Section 2822, General Code, reading :

“When employed by the day, the surveyor shall receive five dollars for each day and his necessary actual expenses. * * * ”

The then Attorney General held as disclosed by the third branch of the syllabus:

"The law disregards fractions of a day and when a county surveyor in charge of ditch work is called to inspect and approve the work of a contractor and such work requires a substantial effort, even though the service requires only a fractional part of a day, the surveyor can legally receive compensation for the full day at the rate fixed by statute."

In the course of said opinion it was further stated:

"It is a well established principle that the law does not regard fractions of a day, and that if any substantial service is performed by a public officer on any day he is entitled to his per diem for the whole day."

It is true that Section 2822, General Code, which reads the same now as then, does not contain the words "for the time actually employed in performing his duties", incorporated in Section 6828-58, General Code, now under consideration in this opinion. However, I do not believe that these additional words would change the conclusion reached in the 1912 opinion. The Supreme Court of Iowa, in the case of *White vs. Dallas Co.*, 87 Iowa, 563, 54 N. W. 368, had before it for interpretation that portion of Section 3825 of the then Iowa Code, which read as follows:

"The commissioners of insanity shall be allowed at the rate of three dollars per day, each, for all the time actually employed in the duties of their office. They shall also be allowed their necessary and actual expenses, not including charges for board."

The court held, as set forth in the syllabus:

"The commissioners of insanity are entitled, under Section 3825 of the Code, to three dollars as compensation for each day they are in session, regardless of the number of hours they may be in session."

In the opinion the court further stated:

"It seems to us that the limitation of pay to 'the time actually employed' was put in the statute, not to limit the compensation to the hours in fact occupied in the discharge of their duties, but rather to the days on which they rendered service. If no such words had been used, it would seem that the compensation provided would cover every secular day in the year, whether they were employed or not. The words, 'at the rate of three dollars per day,' fixed the compensation by the day, and not by the hour, or by any other division of time. While the question is not free from doubt, yet it seems to us that the court below correctly held that, if the commissioners were employed in the duties of their office on a given day, they were each entitled to three dollars, regardless of the number of hours of any such employment on the same day."

A somewhat analogous situation to that presented here was before the Attorney General in 1925. At that time, Section 2850, General Code, provided in part that "the sheriff shall be allowed by the county commissioners not less than forty-five nor more than seventy-five cents per day for keeping and feeding prisoners in jail." In an opinion reported on page 371 of the volume of opinions for that year, it was held:

"Under the provisions of Section 2850, General Code, a sheriff is entitled to a full day's allowance for keeping and boarding a prisoner, even though such person is in jail for only part of a day."

An examination of the authorities generally throughout the United States on this question, collated in 1 American Law Reports, Annotated, 276, discloses unanimous holdings that "no length of time of occupation on a day is necessary, to entitle an officer to his per diem."

Based on the foregoing discussion, I am of the view that the directors of a conservancy district may receive the compensation for each day, even though they may be employed only a few hours of such day.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1985.

APPROVAL, LEASE FOR THE RIGHT TO USE PORTION OF OHIO CANAL, IN HANOVER TOWNSHIP, LICKING COUNTY, OHIO, FOR PURPOSE OF DRILLING FOR OIL AND GAS—A. M. HEISEY & COMPANY.

COLUMBUS, OHIO, June 13, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate, executed by you as Superintendent of Public Works, on behalf of the State of Ohio, by the provisions of which there is leased and demised to A. H. Heisey & Company, of Newark, Ohio, for a term of ten years, the right to use and occupy a certain portion of the abandoned Ohio Canal, in Hanover Township, Licking County, Ohio, which is more particularly described in said lease, for the purpose of drilling thereon for gas and oil, and for the purpose of erecting thereon such machinery, tanks and pipe lines as may be necessary for the production, storage and transportation of gas and oil products obtained from wells so drilled.

The rights granted to said lessee under this lease are subject to conditions and restrictions therein provided for and the rental reserved in said lease for the right to use and occupy the abandoned canal lands here in question is one-eighth of the output of the oil and gas that may be produced by the lessee in operating under said lease.

The execution by you of the lease here in question is clearly authorized by the provisions of Section 13970, and other sections relating to your authority to lease canal lands.

The lease here in question is therefore approved by me as to its legality and form, and such approval is evidenced by my authorized signature upon said lease and upon the duplicate and triplicate copies thereof. I am not, however, expressing any opinion as to the policy of executing this lease for the consideration therein provided for, or otherwise.

Respectfully,
GILBERT BETTMAN,
Attorney General.