

4410.

COUNTY SURVEYOR—MAY NOT RECEIVE COMPENSATION FROM TOWNSHIP TRUSTEES FOR SURVEYING TOWNSHIP ROAD.

SYLLABUS:

Where township trustees desire to improve a township road, and preliminary to such improvement request the county surveyor to survey said road for the purposes of determining its location and boundaries, such surveyor may not charge such township for his services and the township trustees have no authority to pay such surveyor therefor.

COLUMBUS, OHIO, June 10, 1932.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

"We respectfully solicit your opinion upon the following state of facts:

The Board of Trustees for Harrison Township, in this county, have under their control a township road called the Evy Road. The residents along this road claim that the road was originally dedicated in the year 1875, as, and the plans called for, a forty foot road. As time passed, various tenants and property owners gradually moved their fences out near the road, and consequently, at some points, the road apparently is partially upon private land, and at other points it is entirely off the line where it was originally located.

Several of the interested property owners claim that they are perfectly willing to surrender their portion of land if they knew the definite line for their boundary. The township Trustees desire to improve this road by straightening out the irregularities, and, as far as possible, improving it on the line on which it was originally established.

The legal question arises by reason of the fact that the County Surveyor, in making said survey, at the request of the Township Trustees, is charging the Township for his services. The Trustees question the legality of this charge. We have consulted several sections of the Ohio Code touching upon the duties of the County Surveyor and are still somewhat in doubt as to whether or not he can legally make said charge.

Therefore, we will appreciate your interpretation of the law as to the authority of the County Surveyor to charge Township Trustees for surveying services upon township roads, particularly as applied to the foregoing facts."

From your letter it appears that the survey in question of the township road was made by the county surveyor at the request of the township trustees preliminary to the improvement of such road.

The surveyor's duties include the supervision of the care, maintenance, improvement and repair of township roads. Section 2792, General Code, provides in part as follows:

"The county surveyor shall perform all duties for the county now or hereafter authorized or declared by law to be done by a civil engineer or surveyor. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction or repair of all bridges, culverts, roads, drains, ditches and other public improvements, except buildings, constructed under the authority of any board within and for the county."

Section 3371-1, General code, provides in part as follows:

"In the maintenance and repair of roads the township trustees and any township highway superintendent, appointed by them, shall be subject to the general supervision and direction of the county surveyor."

Section 3298-6, General Code, provides that when the township trustees determine to improve a road they shall order the county surveyor to make surveys, plans, etc., and section 3298-7 provides for their transmission by him to the township trustees. Section 3298-15, General Code, provides that the estimated assessments be made by a county surveyor, and section 3298-15k provides that the work be done under his general supervision. Section 7188-1, General Code, provides for the keeping of a record by the county surveyor of the description and identification of all roads in the county. Section 2803, General Code, provides in part as follows:

"The county surveyor shall make and keep in a book provided for that purpose an accurate record of all surveys made by himself or his deputies for the purpose of locating any land or road lines, or fixing any corner or monument by which it may be determined, whether official or otherwise."

Further duties of the county surveyor with respect to township roads are outlined in sections 3374, 3298-15 l, 7184, 7187, 7190 and 7192, General Code. From these statutes it is seen that very broad powers and duties are cast upon the county surveyor as to township roads. A survey of this road for the purpose of locating its boundaries was necessary for the improvement which is proposed to be made, although not strictly a part of an improvement proceeding, and I am of the view that this work was within the statutory duties of the surveyor. The question then arises as to whether the surveyor may charge the township for his services.

When the surveyor is authorized to make charges, he must, of course, pay the money received by him into the county treasury. Sections 2977 and 7181, General Code. Opinions of the Attorney General for 1920, Vol. II, page 943. Section 2822, General Code, provides that the surveyor shall receive five dollars (\$5.00) per day when employed by the day, and when not so employed, certain fees for certain specified services. Section 7181, General Code, provides that 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 by taking into account the mileage of the public roads, population and tax duplicate of the county, which salary "shall be instead of all fees, costs, per diem or other allowances, and all other perquisites of whatever kind or description which any county surveyor may collect or receive."

In an opinion of the Attorney General for 1917, Vol. II, page 1196, in which it was held that the county surveyor could not charge the county fees for recording surveys of other surveyors, it was said:

"After the enactment of section 7181 General Code in its present form, there was no longer any reason for the existence of section 2822 G. C., so far as the county is concerned, but in order to preserve its schedule of fees for charges to be made by the county surveyor to private persons, or to political subdivisions other than the county, the legislature provided in section 7181 G. C. that:

'When the county surveyor performs service in connection with ditches or drainage works under the provisions of sections 6442 to 6822 inclusive of the General Code of Ohio, he shall charge and collect the per diem allowances or other fees therein provided for and shall pay all such allowances and fees monthly into the county treasury to the credit of the general county fund. The county surveyor shall do likewise when he performs services under the provisions of sections 2807 to 2814 inclusive of the General Code of Ohio.'

The first group of sections referred to under section 7181 relate to ditch improvements and the second group of sections relate to the establishment of corners of tracts of land when lines become lost or uncertain. The surveyor's fees in the first instance are paid as a part of the costs of the ditch proceeding and in the second instance by the person or persons applying for the survey."

I find no provision authorizing the payment by a township of fees or charges for services rendered by a county surveyor in connection with township roads, and no provision for making the cost of surveys, plans, etc., for a township road improvement a part of the costs of such improvement. Furthermore, in the enactment of section 7181, the legislature preserved the right of a surveyor to charge fees for services only in ditch proceedings and for work done under the provisions of sections 2807 to 2814, General Code, inclusive, and in these two cases the statutes expressly authorize the surveyor to charge for the services rendered by him thereunder.

In Opinions of the Attorney General for 1916, Vol I, page 134, the following is said:

"The township trustees may call upon the county highway superintendent under sections 3298-3, 3298-7, 3298-14 and 3298-15 of the General Code, to perform services in connection with a road improvement carried forward by the trustees. These services consist of the making of surveys, plats, plans, profiles, cross sections, estimates and specifications, and the making of an apportionment or tentative assessment against benefited real estate, and it is also apparent from section 3298-7, G. C., that a certain degree of supervision is to be exercised by the county highway superintendent over construction work carried forward by township trustees, inasmuch as payments for such work are to be made upon estimates furnished by the county highway superintendent. There is no provision, however, for the payment of any part of the compensation or expenses of the county highway superintendent or of his assistants when engaged on township work out of the township treasury, and no provision for

the reimbursement by the township of the county which is charged with the payment of such compensation and expenses."

I am of the opinion that where township trustees desire to improve a township road, and preliminary to such improvement request the county surveyor to survey said road for the purpose of determining its location and boundaries, such surveyor may not charge such township for his services and the township trustees have no authority to pay such surveyor therefor.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4411.

APPROVAL, BONDS OF ROSS COUNTY, OHIO—\$136,021.00.

COLUMBUS, OHIO, June 10, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4412.

APPROVAL, ABSTRACT OF TITLE TO LAND IN MILAN AND OXFORD TOWNSHIPS, ERIE COUNTY, OHIO.

COLUMBUS, OHIO, June 11, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—Recently Opinion 4321 was directed to you concerning the status of title of a tract of land situated in Milan and Oxford Townships, Erie County, Ohio, being purchased by the state from R. E. Sickinger and Wade Roberts. In that opinion, a number of defects in the title, requiring further explanation, were pointed out.

I now acknowledge receipt of a number of affidavits, and of a letter from the Erie County Title Company, which satisfactorily explain the obstacles which I had difficulty in overcoming, and, by reason thereof, I now accord my approval to the title of the state's proposed grantors. Said affidavits and letter are self-explanatory, and I deem it unnecessary to make any further comment except to say that the taxes for the year of 1931 have now been fully paid, leaving only the taxes for the year 1932.

Enclosed please find said abstract, affidavits and other papers relating to said purchase.

Respectfully,

GILBERT BETTMAN,
Attorney General.