

hausted and that those revenues should not need to be supplemented by transfers from the general revenue fund or from any other source to carry out the purposes of the existence of the funds, except in special instances which would merit the more mature consideration that would be given to such a transfer upon application to the Tax Commission and the Common Pleas Court.

The legislature must necessarily be regarded as having used the term "district authority" in the last sentence of paragraph (f) of Section 5625-13, with full knowledge of its meaning as fixed by Section 5625-1, General Code. Upon consideration of the definition of a "district authority" as there stated, which definition is set out in the early part of this opinion, it seems clear that a board of township trustees could not have been meant. The mere fact that the federal government contributed to the financing of the project in question did not constitute the board of township trustees a "district authority" within the meaning of the term as used in the Uniform Tax Levy Law, and in my opinion the road and bridge fund of a township is not a fund of a district authority within the meaning of the term as used in paragraph (f) of Section 5625-13, General Code.

I am therefore of the opinion that a board of township trustees is without power to transfer funds from the general fund of a township to its road and bridge fund by mere resolution of said board of trustees.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

792.

COUNTY COMMISSIONERS — PAULDING COUNTY — MAY ENTER INTO PERSONAL SERVICE CONTRACT WITH ENGINEERING COMPANY WHERE OFFICER IS EMPLOYED AS DEPUTY COUNTY SURVEYOR—COUNTY AUDITOR MAY ISSUE WARRANT TO COMPANY FOR SERVICE PERFORMED.

SYLLABUS:

The county commissioners of Paulding County may enter into a personal service contract with an engineering company, an officer of which is employed as deputy surveyor in said county, and the county auditor may in accordance with law issue a warrant in favor of said company in payment of services so rendered.

COLUMBUS, OHIO, June 22, 1939.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads in part as follows:

"The Auditor of Paulding County requests me to write you for an opinion on the legality of a contract entered into by the County Commissioners of Paulding County, on November 14, 1938, with the Paulding County Engineering Company, by O. E. L. I am herewith enclosing you a copy of this contract. The County Auditor is in doubt as to the legality of the payments made and to be made under this contract for the following reasons:

O. E. L. is a deputy in the office of the County Surveyor of Paulding County, having been appointed by the County Surveyor as such on February 20, 1938, at a salary of \$100.00 per month. He works in the County Surveyor's office and has been drawing his salary at that rate ever since he was so appointed. It appears that he has some knowledge of architectural engineering but, as I understand it, he is not a full fledged architect. Neither is he an engineer.

* * * * *

The specific question we wish answered is: Can the County Auditor legally pay O. E. L., doing business as the Paulding Engineering Company, for the plans and specifications for this hospital and for over-seeing the same while, at the same time, he is legally drawing his salary as deputy surveyor at \$100.00 per month?

Attention is called to Sections 12912 and 12918 of the Criminal Code. I do not, at this time, have any other citations of the civil code bearing upon the question. It is desired that an opinion be given soon before the auditor pays out any more money. I might further add that the state inspectors from the Bureau of Inspection from the State Auditor's Office are here inspecting the books of the county and they have questioned this transaction."

Your inquiry is concerned with the legality of a certain contract for professional engineering services entered into between the county commissioners of Paulding County and the Paulding Engineering Company, in view of the fact that an officer of said company is now employed as a deputy in the office of the county surveyor of Paulding County.

I assume from your letter that this contract was made in conformity with statutory requirements and your sole question is whether the employment above referred to in any way renders it illegal.

With this in mind I have examined the pertinent statutory provisions and fail to find an express prohibition which would prevent an engineering company, an officer of which is employed as deputy county surveyor, from making a contract for personal services with the county commissioners

of the same county for which said officer works unless Section 12910, General Code, can be said to apply. Said section reads as follows :

“Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract *for the purchase of property, supplies or fire insurance* for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”
(Italics the writer’s.)

This statute is a penal one applicable to public officials and by its terms does not specifically prohibit the making of contracts referred to therein.

In the instant case, however, it will not be necessary for me to determine the question of legality in view of the express language of Section 12910, *supra*. That section concerns itself with contracts “for the purchase of property, supplies or fire insurance.” In construing that section, former Attorneys General have on numerous occasions held that being of a penal nature it is subject to the general rule of strict construction and would therefore have no application to a contract for personal services. See Opinions of the Attorney General for 1934, Vol. I, page 394; 1932, Vol. II, page 741; 1928, Vol. II, page 2093; 1918, Vol. II, page 1628; 1916, Vol. II, page 1924; 1915, Vol. I, page 889.

The syllabus of the 1934 opinion, above referred to, reads as follows :

“A member of a board of elections of a county, who, shortly before the time of becoming such member had entered into a contract with the county commissioners of such county to perform architectural services in connection with the erection of an addition to the county tuberculosis hospital, may legally continue during his term of office to carry out his said contract.”

An examination of the text of that opinion will show that the conclusion reached therein would not have been affected had the contract in question been made after the architect was appointed to the county board of elections. The deciding factor was the personal service contract itself and not the time of its inception.

The contract with which we are concerned contains the following provision :

“The Engineer (Paulding Engineering Company) agrees to perform, for the above named work, *professional services* as hereinafter set forth.”

By its very terms, this contract is one for personal services and as such does not come within the purview of Section 12910, supra.

In specific answer to your inquiry, I am therefor of the opinion that the county commissioners of Paulding County may enter into a personal service contract with an engineering company, an officer of which is employed as deputy surveyor in said county, and the county auditor may in accordance with law issue a warrant in favor of said company in payment of services so rendered.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

793.

BONDS—CITY OF CLEVELAND, CUYAHOGA COUNTY \$20,000.

COLUMBUS, OHIO, June 22, 1939.

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

GENTLEMEN:

RE: Bonds of the City of Cleveland, Cuyahoga County,
Ohio, \$20,000. (Unlimited)

The above purchase of bonds appears to be part of a \$2,138,000 issue of refunding bonds of the above city dated September 1, 1936. The transcript relative to this issue was approved by this office in an opinion rendered to your Board under date of March 14, 1938, being Opinion No. 2091.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.