

2796.

SEWER AND WATER DISTRICTS—COMPENSATION OF COUNTY COMMISSIONERS—EMPLOYMENT OF SANITARY ENGINEER.

SYLLABUS:

(1) *Under the provisions of section 6602-14 G. C. county commissioners taking office on January 1, 1925, are entitled to compensation at the same rate as if no compensation had been paid to his predecessor during the fiscal year ending June 30, 1924.*

(2) *Additional compensation allowed to county commissioners under the provisions of section 6602-14 should be pro-rated at the end of the fiscal year to the various projects actually constructed.*

(3) *In determining the compensation paid under section 6602-14, compensation allowed in ditch cases under the provisions of section 6502 should be taken into consideration.*

(4) *In cases where a sanitary engineer has not been employed, the county surveyor may perform the duties of such engineer and use any of his regular office force, deputies and assistants for such purpose.*

COLUMBUS, OHIO, Sept. 22, 1925.

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

GENTLEMEN:—I acknowledge receipt of your request for an opinion upon the following:

“We respectfully request your written opinion upon the following questions involving the interpretation of section 6602-14 G. C., 110 O. L. 341. This section provides for additional compensation to county commissioners in connection with the establishment of sewer and water improvements outside of municipalities and fixes a current year ending June 30th; and further provides that the maximum compensation received by any county commissioner serving in any county affected by this measure shall not exceed the amount of compensation received in the current year by the county auditor serving in such county.

“Question 1: Two members of a board of county commissioners assumed their office on the first day of January, 1925. In the event that estimates have been allowed during the first half of the current year beginning July 1st, 1924, in the sum of \$600,000.00, how will the compensation of the two county commissioners for the remainder of the current year ending June 30th, be computed; at the rate of 1-10 of one per cent on all estimates allowed between the first Monday in January and the 30th of June, 1925, or will it be computed by allowing 1-3 of one per cent on the first \$200,000.00; 1-4 of one per cent on the next \$200,000.00; 1-6 of one per cent on the next \$200,000.00; and 1-10 of one per cent on the remainder of such estimates paid for the last one-half of such current year?

“Question 2: In what manner shall the additional compensation of the county commissioners be apportioned to the various sewer and water districts?

“Question 3: In a county where the additional compensation provided for by section 6602-14 G. C., in connection with the regular salary of the county commissioners amounts to the county auditors salary in such coun-

ty, may the additional compensation provided by section 6502 G. C., be paid to the county commissioners, thereby making his total compensation more than that of the county auditor?

"We also request your opinion upon the following:

"Question 4: May the county surveyor of a county perform the duties provided for by sections 6602-1 et seq. G. C., to be performed by the sanitary engineer? If so, may the services be rendered by his regular office force of deputies and assistants, or would it be necessary for him to organize a separate sanitary department?

"In this connection, we refer you to sections 7181, 2792, and 2793 of the General Code."

Section 6602-14 G. C., to which you refer, provides:

"In addition to the regular salary provided by law for county commissioners, each commissioner serving in a county having one or more regularly created county sewer districts, shall be paid the following amount; for time spent in connection with the establishing of any sewer district or the preliminary work preceding the awarding of any contract for either sewer or water improvements or both, or for the acquiring of sewer or water supply lines already constructed, the sum of five dollars per day for each day actually employed, but not exceeding the aggregate sum of seventy-five dollars on each or any sewer or water improvements; for each and every sewer or water improvement actually installed under this act, a sum equivalent to the following schedule of costs for all improvements or parts of improvements actually constructed during the current year ending June 30th; for the first \$200,000, one-third of one per cent; for all above \$200,000, and not exceeding \$400,000, one-fourth of one per cent; for all above \$400,000, and not exceeding \$600,000, one-sixth of one per cent; for all above \$600,000, one-tenth of one per cent, provided, however, that the maximum compensation received by any commissioner or sanitary engineer serving in any county affected by this measure shall not exceed the amount of compensation received during the current year by the county auditor serving in the said county. The cost of any improvement shall be determined by estimates paid to the contractor for such improvements plus the cost of all engineering, publication and other costs of such improvements, as defined in this act, exclusive of the compensation provided in this section. The method of payment of the above shall be as follows—the sum of five dollars per day, as specified above, shall be paid by warrants issued by the county auditor upon the county treasurer upon the filing in the county auditor's office of an itemized statement by each county commissioner for such service. For improvements actually installed, as specified above, payments shall be made by warrants issued by the county auditor upon the county treasurer upon the filing in the county auditor's office of a bill properly authorized and certified by the county sanitary engineer, based upon monthly estimates of work constructed by any contractor or contractors regularly engaged in performing work upon any sewer or water contract or both plus the engineering and incidental costs as provided in this act exclusive of the compensation provided in this section. The funds to pay the above additional compensation to county commissioners shall be included in the incidental cost of each improvement, and the moneys shall be provided as already provided in this act. In the event that any improvement, either sewer or water or both, is installed upon which a per diem fee has been previously paid, deduction shall be made of the

amount so paid when the bills based upon the percentage allowance are regularly presented to the county auditor by the sanitary engineer for payment."

Your first inquiry arises by reason of the fact that there will be a change in the personnel of the commissioners during the fiscal year ending June 30th.

In this connection your attention is directed to an opinion of this department rendered June 22, 1925, being No. 2586, a copy of which is enclosed herewith, which held:

"County commissioners who have actually performed duties in connection with ditch improvement, in which former county commissioners have received compensation for four days' work, may be allowed the compensation provided in section 6502, General Code."

Practically the same question was raised in that opinion that is raised here in so far as whether the commissioners are entitled to the full compensation provided, irrespective of when they became members of the board. The language of section 6502 is identical in so far as providing additional salary is concerned. Therefore, by analogy this opinion, if correct, answers your first inquiry. In other words, the commissioner who performs the duties up until January 1, 1925, will be entitled to whatever fees have been accumulated and earned at the time he leaves office. The incoming commissioner will be entitled to his compensation as if no compensation had previously been drawn.

The maximum amount, however, that any commissioner may receive cannot exceed the compensation of the county auditor.

In considering your second inquiry as to the manner of apportioning the additional compensation of the county commissioners to the various sewer and water districts, it is suggested that at the end of the fiscal year, after the total compensation is known, the same should be apportioned or pro rated to the various projects with reference to the amount that each project bears to the total amount of such fees.

In your third inquiry you ask in substance whether in the allowing of additional compensation referred to in section 6602-14, moneys received by such commissioners under section 6502 must be taken into consideration. You are advised that section 6602-14 expressly provides that compensation received by any commissioner "shall not exceed the amount of compensation received during the current year by the county auditor serving said county."

It would therefore seem clear that moneys received by such a commissioner under the provisions of section 6502 must be taken into consideration in determining the maximum amount under section 6602-14.

You further inquire whether the county surveyor may perform the duties of a sanitary engineer. Section 7181, among other things, provides that "the county surveyor shall give his entire time and attention to the duties of his office." Technically speaking, it would not seem to be any part of the duties of the county surveyor to give attention to sanitary districts. However, by referring to section 2792 which relates to the duties of the surveyor, you will find the following:

"County surveyors shall perform all duties for the county now or hereafter authorized or declared by law to be done by a civil engineer or surveyor."

It is probable that the latter section is broad enough to authorize a county surveyor to perform such duties, and the special sections creating the sanitary district

and providing for the employment of an engineer constitutes an exception to the general provision in section 2792.

It is therefore my opinion that if the county surveyor so desires, and no sanitary engineer is employed, he may perform the duties of the sanitary engineer. In connection with the performance of such duties undoubtedly he could use the same office force, deputies and assistants which he uses to perform other duties in connection with his department.

Respectfully,

C. C. CRABBE,

Attorney General.

2797.

COUNCIL OF MUNICIPALITY MAY ENACT LEGISLATION WITHIN THE SCOPE OF ITS POWERS EVEN THOUGH INCONSISTENT WITH A LAW PROPOSED BY INITIATIVE PETITION, PENDING DECISION THEREON AT THE ELECTION.

SYLLABUS:

There is no provision of the constitution or statutes which prevents the council of a municipality from passing legislation within the scope of its powers inconsistent with a law that has been proposed by an initiative petition, pending the decision thereon at the election.

COLUMBUS, OHIO, Sept. 22, 1925.

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

GENTLEMEN:—You request my opinion on a state of facts submitted by the solicitor of the city of Hamilton, the pertinent part of which is:

“An ordinance was introduced in the city council authorizing and directing the director of public service to enter into a ten-year contract for the purchase of artificial gas to be used by the city in supplying its inhabitants with gas. See section 3618-1 of the General Code. Council refused to pass such ordinance. Thereupon an initiative petition with the required number of signatures was filed with the city auditor to initiate the ordinance rejected by council and which will be voted on by the people at the coming November election. Can council, after the filing of such initiative petition and until voted upon in November, pass any legislation which would conflict in any manner with the provisions of the initiative ordinance? If council would proceed and lease the gas distribution system and if hereafter the people of the city would vote in favor of the ordinance, the city would find itself in the embarrassing situation of having a contract for a large supply of gas and have no gas mains or other facilities through which it could supply the inhabitants of the city with such gas. It occurred to me that until this question is decided at the polls in November, the council could do nothing to in any way affect the situation and the result of the election.”

In substance your inquiry is whether after an initiative petition has been filed