

Note from the Attorney General's Office:

1939 Op. Att'y Gen. No. 39-1572 was overruled by
1988 Op. Att'y Gen. No. 88-081.

1572.

COUNTY ENGINEER—SALARY PAID FROM GENERAL FUND OF COUNTY—NOT INCLUDED IN PROVISION, SECTION 2782-2, G. C.—COSTS, OPERATION OF OFFICE, MAINTENANCE, OFFICE SUPPLIES AND SALARIES OF ALL EMPLOYEES, EXCLUDING COUNTY ENGINEER, PAID FROM ANNUAL APPROPRIATION MADE BY BOARD OF COUNTY COMMISSIONERS—TWO-THIRDS COST OF OPERATION OF OFFICE PAID FROM TAX FUNDS OF MOTOR VEHICLE LICENSE AND MOTOR VEHICLE FUEL.

SYLLABUS:

1. *The salary of the county engineer is payable from the general fund of the county and is not included in the provisions of Section 2782-2, General Code, concerning the payment of the salaries of all of the employes of the office of the county engineer.*

2. *The costs of operation of the office of county engineer, including the salaries of all of the employes thereof and the cost of the maintenance thereof as provided by the annual appropriation made by the board of county commissioners for such purpose, includes the salaries of all employes of the office, other than the county engineer, and all items of office supplies and maintenance costs.*

COLUMBUS, OHIO, December 14, 1939.

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

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

“Section 2782-2, General Code, as enacted by Senate Bill No. 320, effective September 6, 1939, provides that two-thirds of the cost of operation of the office of the county engineer shall be paid from motor vehicle license and gas tax funds.

May we respectfully request your opinion upon the following question:

Can the salary of the county engineer be considered a part of the cost of operation of the office of the county engineer, and be paid from these funds as provided in Section 2782-2, General Code?”

Section 2782-2, General Code, referred to in your inquiry, was enacted as Amended Senate Bill No. 320 by the 93rd General Assembly, effective September 6, 1939, and reads as follows:

“Two-thirds of the cost of operation of the office of county engineer, including the salaries of all of the employes thereof and the cost of the maintenance thereof as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county’s share of the fund derived from the receipts from motor vehicle licenses as distributed by Section 6309-2 of the General Code, and from the county’s share of the fund derived from the motor vehicle fuel tax as distributed by Section 5541-8 of the General Code.”

The county engineer is an elective public officer (see Section 2782, General Code). His salary is determined as provided by Section 7181, General Code, by the number of miles of public roads in his county and its population and as further provided therein:

“* * * Such salary shall be paid monthly out of the general county fund upon the warrant of the county auditor and 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. * * *”.

The county engineer is required by Section 2786, General Code, to keep his office at the county seat in such room or rooms as are provided by the county commissioners. The cost of operating the office, which is equivalent to saying the expenditure or outlay of money required to enable the office to function, is separate and apart from his salary. As pointed out above, his salary is fixed and determined by law, and as said in 32 O. Jur., page 1014, Section 154:

“It is a well-established principle that a salary pertaining to an office is an incident of the office itself, and not to its occupation and exercise, or to the individual discharging the duties of the office. Nor does the compensation constitute any part of the office.”

It thus appears that there is the county engineer, a public officer whose salary is determined by statutory formula and payable from the general fund, and his office. The cost of operating the office includes the salaries of assistants, clerks and stenographers, together with office supplies and various other items of maintenance, all dependent upon the annual appropriation. Section 2782-2, *supra*, leaves no question as to what salaries are to participate in the motor vehicle license and motor vehicle fuel tax funds, namely, “salaries of all the employes” of the county engineer’s office. The county engineer himself is the employer.

The employes are those selected by him. They serve at his pleasure subject to dismissal without cause unless in the classified service.

While provision is made for the engineer's salary in the annual appropriation, as has been already suggested, his salary is definitely determined by the provisions of Section 7181, General Code, and cannot be raised or lowered by any authority during his term of office. (See Article II, Section 20, of the Constitution.) The salaries of the office employes are fixed by the engineer and are subject to change by him at any time so long as his total costs of operation remain within his annual appropriation.

The above distinction between the status of the public official and that of his employes receives support from the provisions of Sections 5541-8 and 6309-2, General Code, which sections must be construed as being in pari materia with Section 2782-2, supra. Section 6309-2, which was enacted in its present form by the 93rd General Assembly as Amended Sub. Senate Bill No. 40, effective May 29, 1939, so far as pertinent to your inquiry reads as follows:

“The remainder of the revenue collected under the provisions of this chapter shall, after payment of the expenses of the bureau of motor vehicles (including the payment of claims authorized by Section 6308-12 of the General Code), be distributed as follows:

(1) Twenty-five percentum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. The portion of such money due the municipal corporation shall be paid into the treasuries of such municipal corporations forthwith upon receipt by the county auditor, and the remainder retained in the county treasury. In the treasuries of such counties, *such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways and maintaining and repairing bridges and viaducts, and for no other purpose, and shall not be subject to transfer to any other fund* excepting to the extent temporarily authorized by paragraph (3a) hereof.” (Italics the writer's.)

The intention of the Legislature apparently was to restrict the use of motor vehicle license and motor vehicle tax funds as levied by Sections 5527 and 5541, General Code, to the construction, improvement, maintenance and repair of public highways. The only material exception appears to be the temporary diversion permitted by Section 6309-2 (3a), General Code, for poor relief, which diversion ends on April 15, 1941.

As I have previously suggested, the county engineer is a public officer. His office exists in each county regardless of work, if any, to be done on public highways. In order to provide and assure an adequate staff of assistants to carry on the highway work, the Legislature has authorized two-thirds of the costs of operation of his office to be paid from the motor vehicle license and motor vehicle fuel tax funds.

In specific answer to your inquiry, it is my opinion that Section 2782-2, General Code, which authorizes two-thirds of the costs of operation of the office of county engineer to be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses, as distributed by Section 6309-2 of the General Code, and from the county's share of the fund derived from the motor vehicle fuel tax, as distributed by Section 5541-8 of the General Code, does not authorize the salary of the county engineer.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1573.

CERTIFICATE OF JUDGMENT—FILED WITH CLERK OF COURTS UNDER SECTION 11656 G. C.—LIEN—ATTACHES TO ALL LANDS WITHIN COUNTY OF JUDGMENT DEBTOR—CONTINUES FIVE YEARS AFTER FILING—STATUS WHERE EXECUTION ISSUED OUT OF COURT OF GENERAL JURISDICTION—SECTION 11656-1 G. C.—WHERE LIEN OBTAINED UNDER EITHER STATUTE—WILL NOT PREVAIL TO PREJUDICE OF ANY OTHER BONA FIDE JUDGMENT CREDITOR, UNLESS EXECUTION AND LEVY BE MADE WITHIN ONE YEAR AFTER RENDITION OF JUDGMENT.

SYLLABUS:

1. *Where a certificate of judgment is filed with the clerk of courts of a county pursuant to Section 11656, General Code, a lien is thereby obtained which attaches to all the lands of the judgment debtor within the county and which continues for a period of five years after such filing.*

2. *Where execution is issued out of a court of general jurisdiction, pursuant to Section 11656-1, General Code, and lands of the judgment debtor are seized in obedience to the command thereof, a lien is thereby obtained on the lands so seized which continues for a period of five years after such seizure.*

3. *Where a lien is obtained on lands of a judgment debtor either by filing a certificate of judgment pursuant to Section 11656, General Code, or by execution and levy pursuant to Section 11656-1, General*