

treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employe, commissioners, council, body or board, or the chief clerk thereof."

Section 5660 of the General Code, prior to the amendment related only to the commissioners of the county, the trustees of the township and the board of education of a school district and did not relate to any authority, officer or employe of such political subdivision. The amendment seems to be much more comprehensive than the former statute and it is believed would include the treasurer of a municipality.

Sections 5660 and 5649-3g of the General Code, may be said to be in *pari materia* with the sections relating to the former duties of the sinking fund trustees, which by amendment were made duties of the treasurer of a municipality. Therefore, all these statutes must be considered together in arriving at the intent of the legislature in so enacting them.

In answer to your specific question it is believed that it is the duty of the treasurer and the auditor of a city or the clerk of a village to keep a record of the bonds outstanding, maturing, interest payable, etc., when such treasurer assumes the duties of a sinking fund trustee.

Second, the treasurer may not issue a check in payment of maturing bonds and bond interest without a warrant from the auditor of a city or the clerk of a village.

Third, the treasurer may not pay maturing bonds and interest without having obtained a certificate from the auditor or clerk as provided by section 5660 of the General Code.

Fourth, it is the duty of the auditor or clerk to keep a record of the sinking fund receipts and disbursements.

Respectfully,

C. C. CRABBE,

Attorney General.

2991.

COUNTY SEWER DISTRICTS—COMPENSATION OF COUNTY COMMISSIONERS—SECTIONS 6602-14 AND 2295-11 OF THE GENERAL CODE CONSTRUED.

SYLLABUS:

1. *A county commissioner who took office January 1st, 1925, is not entitled to compensation for preliminary engineering work done during 1924, in connection with a project which was constructed during 1925, the previous commissioner having been ineligible to receive compensation.*
2. *A county commissioner is eligible to receive compensation for preliminary work done prior to June 30th in a year in which he is eligible to receive compensation for work constructed during 1925.*
3. *Interest on bonds for the first year should not be included in the cost on which the commissioner's compensation is based.*

COLUMBUS, OHIO, December 7, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

" Certain questions have presented themselves in regard to the proper computation of the compensation for the county commissioners of this coun-

ty and I hereby request a ruling from you on the following doubtful points.

"1. In the case of a county commissioner who took office on January 1, 1925, is such commissioner entitled to compensation for preliminary engineering work done during 1924 in connection with a project which was constructed during 1925, the previous commissioner having been ineligible to receive compensation by reason of having been in office at the time the section referred to became effective? It is plain that no compensation on the percentage basis can be paid on account of preliminary work until actual construction is begun. Stated differently, the question is, can a county commissioner who is eligible to receive percentage compensation for the construction of a certain improvement, receive compensation for the preliminary engineering work which was done in connection with the same project prior to the time when he became eligible to receive such compensation?

"In case of preliminary work done prior to June 30th in a year when a commissioner is eligible to receive compensation, but the construction is not performed until after June 30th, should such commissioner then receive, at the end of the following year, compensation based on the cost of the work including the preliminary work done during the preceding fiscal year?

"2. Should the interest on bonds for the first year be included in the cost on which commissioner's compensation is based?"

Section 6602-14 of the General Code, relating to compensation of county commissioners for services rendered in connection with county sewer districts provides as follows:

"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 improve-

ments 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 contracts 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."

In answer to your first question it will be noted that section 6602-14 quoted above, in part provides as follows:

"For time spent in connection with the establishment of any sewer district or the preliminary work preceding the award of any contract for either sewer or water improvements or both * * * ."

From the above it may be said that the compensation provided under this section is for work done by a county commissioner in connection with such improvements. In a case where the preliminary engineering work was done prior to the taking of office of a county commissioner it could not be said that such commissioner had done any part of such preliminary work and therefore it is my opinion that such commissioner would not be entitled to compensation for the same as such work was done by the preceding commissioner who was prevented from getting payment for the same by virtue of the limitation on the amount of compensation receivable.

In the second instance mentioned by you the preliminary work is done prior to June 30th in a year when a commissioner is eligible to receive compensation, but the construction is not performed until after June 30th. Your question is, whether such commissioners receive at the end of the following year compensation based upon the cost of the work including the preliminary work done during the preceding year?

As has been said above, the compensation is for work actually done by the county commissioner. And if the preliminary work is done in a year in which the commissioner is eligible to compensation, or in other words, has not reached the maximum provided by law and therefore has received no compensation for such preliminary work, it would seem that the county commissioner would be entitled in the succeeding year to have the preliminary work done during the preceding year taken into consideration when figuring the percentage compensation for the construction of such improvement. The section provides in part as follows:

"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."

As the preliminary engineering is a part of the cost of an improvement and as no compensation has been provided for such preliminary engineering in the

preceding year it would seem that the same could be included in the cost of construction for the succeeding year.

It is therefore my opinion that for preliminary work done prior to June 30th in a year when a commissioner is eligible to receive compensation and the construction is not performed until the succeeding year the county commissioner may receive compensation based on the costs of the work constructed including the preliminary engineering work done the preceding fiscal year.

The third question is, should the interest on bonds for the first year be included in the cost on which the commissioners' compensation is based.

Section 6602-14 of the General Code, provides for the compensation on all improvements actually constructed during the current year and further provides as follows:

"The cost of any improvement shall be determined by estimates paid to the contractor for such improvements plus the costs of all engineering, publication and other costs or such improvement, as defined in this act, exclusive of the compensation provided in this section."

Your question naturally turns on whether interest on bonds for the first year can be called a part of the cost of the improvement.

Section 2295-11, a part of the Griswold Act, provides as follows:

"The cost of construction of any building, utility or improvement may be construed to include interest payable during construction on bonds issued for such construction. A sum not to exceed one year's interest on any bond issue may be included in the amount of the issue to the extent necessary to care for interest maturing previous to the receipt of the taxes or assessments from which such interest is to be ultimately paid."

This section being part of the Griswold Act pertains only to bond issues and it is believed has reference to and is applicable only to bond issues. In other words it is believed that the cost of construction as therein defined is limited to the issuing of bonds and cannot be taken as a definition of the costs of construction for other purposes. This construction of section 2295-11 would make it necessary to go back to section 6602-14 to determine if this interest may be called a part of the cost of construction. The compensation is based upon monthly estimates of work constructed by the contractor plus the engineering and incidental costs as provided in this act and exclusive of the compensation provided by this section. Strictly speaking the one year's interest on such bonds is not a cost of the construction as the cost of improvements under the sanitary sewer statute is paid for by assessment against the property holders within such sanitary sewer district. If the assessments are paid in cash there would be no reason for issuing bonds for such improvements. Bonds are only issued in anticipation of the collection of assessments against the property holders and the funds necessary to pay the first year's interest on the bonds are not a cost of the improvement but are a cost caused by the failure to pay assessments in cash and are an incident of the bond issue.

It is therefore my opinion that interest on bonds for the first year should not be included in the cost on which the commissioners' compensation is based.

Respectfully,

C. C. CRABBE,

Attorney General.