

for the purpose of taking and transcribing testimony heard before such master appears to be an official court stenographer or an assistant official court stenographer would not, in my view, alter the situation so far as the payment of the compensation of such stenographer is concerned. If he is an official court stenographer or an assistant court stenographer, on an annual salary, such salary would perhaps go on during the time that he is engaged in the hearing of the case before the master commissioner, but he would not be entitled to the payment of any per diem compensation out of the county treasury anymore than would a private stenographer so employed.

I am of the opinion, therefore, that in the case referred to in your communication there was no authority whatever for paying the per diem compensation of either of the stenographers employed by the master commissioner out of the treasury of "M" county. It follows that in this case the stenographers employed to take and transcribe the testimony at the hearing before the master commissioner should be required to pay back into the treasury of "M" county the money illegally paid to them out of such treasury and that they should be required to look to the money paid in as costs in the case as the source of their compensation, unless the same is paid directly by the parties.

By way of specific answer to the questions made in your communication, it is obvious that the first question is to be answered in the negative.

As to your third question, it is quite clear that the county of "C" is no more liable for the payment of the compensation of the stenographers than is the county of "M"; and that a finding should be made against the county of "M" for the return of the amount paid to it by the county of "C."

With respect to your second question, it is to be observed that the compensation of said stenographers, to a reasonable amount, could be made a part of the fees and charges of the master commissioner and, as such, taxed as a part of the costs in the case.

It is not clear to me how your department is concerned with the fourth question made in your communication, but answering the same it may be said that if the compensation of the stenographers has been properly made a part of the costs in the case, in the manner above pointed out, the plaintiff, in the action referred to in your communication, on the facts therein stated, can be held liable for the balance of the costs including such stenographers' fees, up to two-thirds of the costs in the case.

In view of what has been said in answer to your third question, no answer to the fifth question made in your communication is required.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2383.

INDEXES—SECTIONAL—CONTRACTORS EMPLOYED BY COUNTY COMMISSIONERS HAVE ACCESS TO RECORDS DESPITE OBJECTION OF RECORDER—DEPUTY COUNTY OFFICER MAY PERFORM PRIVATE BUSINESS IF PUBLIC DUTIES ARE NOT INTERFERED WITH.

SYLLABUS:

1. *By authority of Section 2766, General Code, county commissioners who contract for the making of county sectional indexes may permit their contractor to have access to the records kept in the office of the county recorder at such time and during such hours as may seem to the commissioners most expedient, whether the county recorder consents to the same or not.*

2. *A deputy county officer is not precluded from private employment so long as such private employment is not inconsistent with public employment, and does not in any way interfere with the duties devolving upon him as such deputy.*

COLUMBUS, OHIO, July 23, 1928.

HON. GEORGE A. MEEKISON, *Prosecuting Attorney, Napoleon, Ohio.*

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

“The Board of County Commissioners of Henry County, Ohio, under Section 2766 of the General Code of the State of Ohio, have awarded a contract to two persons to make sectional indexes of the Record of Deeds and Mortgages of Henry County, Ohio.

Contract for the completion of the work has been entered into between the county commissioners and the contractors by which the contractors have obligated themselves to complete the work within a certain limited time.

A great deal of friction has occurred between the Recorder and the contractors over the use of the office and the handling of the books, which apparently is delaying the completion of the work and proving a source of annoyance to all persons having occasion to use public records, and more particularly to the lawyers in the county.

The Recorder's office is kept open 7½ hours per day, except Saturday when it is closed at 12 o'clock for the day. The Recorder refuses to permit the contractors to have a key to the office or to have access to the books at any time except during her office hours.

Will you please tell me if, in your opinion, the county commissioners have authority to furnish the contractors with a key to the office and keys to the metal sliding vaults in order that they may have access to the records at hours other than those kept by the Recorder, or if there is any other way by which the contractors can have access to the books more than 7½ hours per day.

Another matter which is occasioning considerable friction is this: Has the deputy recorder, receiving compensation from the county, a legal right to make abstracts in the Recorder's office for private employment during the hours she is employed by the county.”

Counties are local subdivisions of the state, created by the sovereign power of the state. By force of the Constitution of Ohio, Article X, Section 1, the General Assembly is directed to provide by law for the election of such county officers as may be necessary. By virtue of the same instrument, the legislative power of the state is vested in the General Assembly, save such as is reserved to the people to be exercised through the medium of the initiative and referendum. The resultant implication from the foregoing is, that the General Assembly, in the exercise of its legislative power to provide for the organization of county governments by providing for the election of such officers as may be necessary, is empowered to judge what officers are necessary and to fix the powers and duties of such officers as are provided for, insofar as the same are not specifically fixed by the Constitution itself.

The office of county recorder is not created by the Constitution, and the only mention made in the Constitution of the powers of county commissioners is that contained in Article X, Section 7 of that instrument, which provides:

“The commissioners of counties, the trustees of townships, and similar boards, shall have such power of local taxation, for police purposes, as may be prescribed by law.”

The Legislature has created the office of county recorder, and fixed his duties (Sections 2750 et seq., General Code). The Legislature has also provided for the number of county commissioners to constitute the board of county commissioners, and has provided for the manner of their election (Section 2395, General Code). These officers being creatures of statute, are limited in their powers and duties to such as are granted to and required of them either by express statutory provision or by necessary implication. The relative powers and duties of the several county officers, insofar as the function of one office may become dependent upon that of another, are not clearly defined by statute.

There is no supervising authority in county government. Each officer, within the realm of the duties of his office, is independent, yet each is dependent to some extent on the county commissioners, especially with respect to the furnishing of offices and supplies, and the providing of moneys for the payment of deputies and clerks, and other necessary expenses incident to the maintenance of the office.

An examination of the several statutes relating to the duties of the county recorder shows his duties to consist of the keeping of four separate sets of records in which he shall record in the proper manner all instruments in writing required by law to be recorded, and presented to him for that purpose; keeping proper indexes to the same; keeping a daily register of deeds and mortgages filed in his office, and noting the day and hour of their filing; transcribing records of other counties, when directed so to do by the county commissioners; keeping sectional indexes after the same are made; performing such duties as are required of him in the registration of land titles under what is commonly known as the Torrens Law (Sections 8572-1 to 8572-118, General Code); furnishing when required, certified copies under seal, of the records of his office; and, when going out of office, delivering to his successor the seal of office, all books, records and other instruments in writing belonging to the office, and taking his receipt therefor.

The duties of the county commissioners, insofar as they relate to the office of recorder and the keeping of the records of that office, are to approve the bond which the recorder is required to give; to provide rooms at the county seat for the keeping of the office of recorder; to fill vacancies in the office as they may occur; to provide for the necessary expense of maintaining the office; to direct the transcribing of records of other counties, when necessary; and to let contracts for county sectional indexes when in their opinion such indexes are needed.

The duties of the commissioners and recorder, with respect to the making and keeping up of sectional indexes, are found in Sections 2766 and 2767, General Code, which read in part as follows:

Section 2766. "When in the opinion of the commissioners of any county sectional indexes are needed, and they so direct, in addition to alphabetical indexes provided for in Section twenty-seven hundred and sixty-four, they may provide for the making in books prepared for that purpose, sectional indexes to the records of all real estate in the county, beginning with some designated year and continuing through such period of years as they may specify, by placing under the heads of the original surveyed sections or surveys, or parts of a section or survey, squares, subdivisions or lots, on the left hand page, or on the upper portion of such page of such index book, * * *.

The compensation for the services rendered under this section shall be paid from the general revenue fund of the county and no additional levy shall be made in consequence thereof. And in the event that the county commissioners decided to have such sectional index made then such commissioners shall advertise for three consecutive weeks in one newspaper of general circulation in the county and for sealed proposals to do said work as provided herein, and shall let said work to the lowest and best bidder, and shall re-

quire him to give bond for the faithful performance of the contract, in such sum as the said commissioners may fix, and said work shall be done to the acceptance of the bureau of uniform accounting of this state upon allowance by such commissioners; and such commissioners shall have power to reject any and all bids therefor, provided that no more than five cents shall be paid for each entry of each tract or lot of land."

Section 2767. "When brought up and completed, the recorder shall keep up the general indexes described in the next preceding section."

There are no limitations on the manner by which the county commissioners shall furnish these sectional indexes or the means of furnishing access to the records, which the contractors must necessarily have in order to make the indexes, other than those stated in Section 2766, above quoted.

The recorder, by reason of his duties in recording instruments and keeping the indexes, and the requirement that he turn over to his successor the books and records kept in his office, is necessarily the custodian of the records for these purposes, yet the Legislature has, by empowering the commissioners to provide for the making of sectional indexes and letting contracts therefor, clearly reposed in the commissioners the custody of such records, insofar as the same may be necessary for that purpose. Nowhere is disclosed an intent on the part of the Legislature to repose in the recorder the exclusive custody of the records when the same are needed for other purposes. On the other hand, the Legislature has clearly expressed an intent that the custody of the records reposed in the recorder must be surrendered for the purpose of enabling the contractor of the commissioners to use the records for the making of the indexes which he contracts to furnish. For that reason, in my opinion, the commissioners may command the use of the records at any and all reasonable times they may see fit to require them, for the purpose of enabling their contractor to make sectional indexes, and may authorize such contractor to use such records at such time as may be necessary. Provision to that effect may be embodied in the contract at the time of making it, or permission may be given later, if it was not done at that time.

Coming now to your second question, it is a familiar principle of law that public officers and their deputies owe to the public faithful and diligent service, and are not permitted to devote the time which they owe to the public service to their own private business. Nor are they permitted to conduct a private business, which will in any wise conflict or interfere with the duties of their position. The preparation of abstracts does not necessarily conflict with the duties of a deputy recorder, providing such abstracts are made at such time as to not interfere with the duties of such deputy recorder, which he is required to perform as a part of his public duties. A deputy recorder or any other public servant is not required, after all the work required in his position is performed to sit idly by and not profitably employ his time. If a deputy recorder does all the work necessary to keep the records, as required by law, and thus fully serves the public, there can be no objection to his employing the remaining portion of his time in making abstracts, or doing anything else which does not in any wise conflict with his public duties. Each individual instance of an alleged conflict of public duty with private employment would necessarily have to be determined on the facts. In my opinion, it cannot be said as a matter of law, that the mere fact that a deputy recorder makes abstracts during the hours that the recorder's office is open to the public is necessarily a violation of his duties as deputy recorder.

In specific answer to your questions therefore, I am of the opinion:

First, that the board of county commissioners is authorized to permit the contractors for the making of sectional indexes to use the records kept in the recorder's office for that purpose, at such times as it sees fit, and may for that purpose furnish the

contractors a key to the recorder's office and to the filing cases, whether the county recorder consents to the same or not.

Second, a deputy recorder whose time is not all consumed in performing the duties of his position, may employ the remaining portion of his time in making abstracts or doing such other things as he desires, so long as he in no wise neglects the performance of his duties as deputy recorder, or permits his other activities to conflict with such duties.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2384.

BONDS—CITY MAY NOT ISSUE FOR UNDETERMINED STREET IMPROVEMENT.

SYLLABUS:

A municipal corporation may not legally issue bonds for the purpose of creating a fund from which to pay the city's portion of the cost of paving and improving streets, the streets and the amount of the municipality's portion for each to be determined thereafter.

COLUMBUS, OHIO, July 23, 1928.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads:

"The syllabus of Opinion No. 1401, to be found at page No. 1082, Opinions of the Attorney General for 1918, reads:

'Under Section 3939 of the General Code a municipal corporation is authorized to issue bonds for the purpose of improving or repairing specifically determined streets or parts thereof, but said section does not authorize a municipality to issue bonds for the purpose of providing a fund out of which to pay the cost and expense of such street improvements and repairs as may thereafter be determined from time to time.'

Sections No. 3939 and No. 3821, G. C., were repealed, 112 O. L. 364, and authority to issue bonds is now found in Section No. 2293-2, G. C., 112 O. L. 365.

QUESTION: May a municipal corporation legally issue bonds for the purpose of creating a fund from which to pay the city's portion of the cost of paving and improving streets, the streets, and the amount of such city's portion for each, to be determined thereafter?"

In the above communication you state that Section 3939, General Code, has been repealed. This is not quite correct, as Section 3939 was not repealed but was amended in The Uniform Bond Act (112 O. L. 364). Prior to its amendment, Section 3939, General Code, contained the general authority for the issuance of bonds by municipalities and, in so far as pertinent to the question you submit, provided:

"When it deems it necessary, the council of a municipal corporation, by an affirmative vote of not less than two-thirds of the members elected or appointed