

264.

COUNTY SURVEYOR—RESIDENT DISTRICT DEPUTY DIRECTOR—NO REIMBURSEMENT OF EXPENSES FROM COUNTY TREASURY FOR HIS ATTENDANCE AT HIGHWAY CONFERENCE.

**SYLLABUS:**

*When a county surveyor is appointed by the Director of Highways as a resident district deputy director, and as such resident district deputy director, attends the conferences called by the Director of Highways under the provisions of Section 1183-1, General Code, he is not entitled to payment of his expenses so incurred, out of the county treasury.*

COLUMBUS, OHIO, April 4, 1929.

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

GENTLEMEN:—This is to acknowledge receipt of your communication of recent date which reads as follows:

“We respectfully request your written opinion upon the following:

Section 1183 of the General Code, as amended, 112 O. L. 433, provides that the Director of Highways may appoint and assign a resident district deputy director to each resident district. It further provides that the county surveyor may be appointed and serve as such resident district deputy director of the district made up in whole or in part of a county of which he is the surveyor. Section 1183-1 of the General Code authorizes the director to call the resident district deputy directors and assistants together once each year for the purpose of conducting a conference or school. It further provides that the director shall also be authorized to call any resident district deputy director and assistant or county commissioner or commissioners into a conference at any time and such county officers shall in addition to their salaries receive from their respective counties their actual and necessary expenses incurred in such attendance.

Question 1. When a county surveyor appointed as resident district deputy director attends a conference or school as provided for in Section 1183-1, G. C., may his expenses be paid by the county of which he is surveyor?

Question 2. When such surveyor as resident district deputy director is called into conference at other times as provided in Section 1183-1, is he entitled to his expenses to be paid by the county of which he is the county surveyor?”

In addition to the creation of divisions of the state for state highway purposes in the manner provided for by Section 1182, General Code, as amended in the enactment of the Norton-Edwards Act, 112 O. L. 433, provision is made by Section 1183, General Code, for the division of the state into resident districts, the boundaries of which are coterminous with those of the several counties of the state, unless the director of highways decides to combine two or more counties into one resident district. Provision is made by said section for the appointment by the Director of Highways of a resident district deputy director in each of such resident districts. In this connection it is further provided, such resident district deputy directors shall be competent civil engineers; that they shall be appointed to serve during the pleasure of the Director of Highways, and shall receive a salary not to exceed three thousand dollars per annum; and that they shall perform such duties as may be prescribed by the Director of Highways. Said Section 1183, General Code, further contains the following provisions:

"A county surveyor may be appointed and serve as such resident district deputy director of the district made up in whole or in part of the counties of which he is surveyor. Any compensation paid to a county surveyor, as a resident district deputy director, by the director shall, by such county surveyor, be paid into the county treasury."

Section 1183-1, General Code, as enacted 112 O. L. 436, reads as follows:

"The director is authorized to call the resident district deputy directors and assistants together once each year, in their respective divisions, for the purpose of conducting a conference or school in which the best methods of road building and other matters of interest shall be discussed, and at which instructions may be given to said resident district deputy directors and assistants pertaining to their work, by the director, or by another person designated by him for that purpose. The director shall also be authorized to call any resident district deputy director and assistant or county commissioner or commissioners into a conference at any time for any purpose connected with his official duties, and such county officers shall in addition to their salaries receive from their respective counties their actual and necessary expenses incurred in such attendance."

In the consideration of the application of the above quoted statutory provisions to the questions here presented, it is clear that the resident district deputy directors appointed by the Director of Highways under the provisions of Section 1183, General Code, are not county officers, nor consistent with constitutional provision could they be such.

Under provisions of said section the county surveyor, a county officer, may be appointed as resident district deputy director in the district made up in whole or in part of the county of which he is surveyor. But when such county surveyor is appointed as resident district deputy director, the statutory provisions here under consideration deal with him not as a county surveyor or a county officer; but as a resident district deputy director of highways.

With respect to the questions here presented, it is obvious from Section 1183-1, General Code, that no provision is made therein for the payment of the expenses of resident district deputy directors as such incurred by them in attending the conferences provided for in said section. And it is quite clear that a resident district deputy director who is the county surveyor of a county included within a resident district is no more entitled to payment out of the county treasury of his expenses in attending such conferences, than would be any other resident district deputy director. Section 1183-1 should of course be construed so as to give full force and effect to all the terms therein used. In this connection, however, I am inclined to view that the provision of said section that "such county officers" shall in addition to their salaries receive from their respective counties their actual and necessary expenses incurred in attending conferences called by the Director of Highways, refers to the actual and necessary expenses of county commissioners in attending such conferences, and extends its full force in providing that such county commissioners shall receive their actual and necessary expenses so incurred.

In the consideration of this as in every other case where a question is presented with respect to the right of a county officer to the payment of compensation by way of salary, expenses or otherwise out of the county treasury it is to be borne in mind that such compensation can be legally paid only upon clear statutory authority therefor. *Richardson vs. State*, 66 O. S. 108; *Clark vs. Lucas County*, 58 O. S. 107; In Re Diemer, 17 N. P. (N. S.) 369, 373.

On the considerations above noted, I am of the opinion that both of the questions presented in your communication should be answered in the negative.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

265.

COLD STORAGE—FOODS—MAY BE MARKED WITH TAG ATTACHED TO CONTAINER OR COVER—WHAT TAG MUST SHOW.

*SYLLABUS:*

*The Director of Agriculture may lawfully adopt regulations permitting the foods described in Section 1155-3 of the General Code to be marked with a tag attached to the container of such food or the cover attached thereto, which tag shall show the date of deposit in and removal from a cold storage warehouse.*

COLUMBUS, OHIO, April 4, 1929.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“I would like to refer to you Section 1155-11 of the Pure Food Laws of Ohio and ask for an opinion as to just how far we could go in making regulations under this section.

We have a request from the cold storage people of Ohio, asking that we make a regulation allowing them to mark all foods put into cold storage with a tag with the date the food was deposited in the warehouse, and it would also bear the date when it was removed.

You will notice if food were allowed to be marked with tags it would be a very easy matter for the tags to be removed when the goods were taken out of storage.

We have told them that we did not feel like assuming the responsibility of allowing this when it seems to us that Section 1155-11 is clear in ‘All food shall at the time it is deposited in any cold storage warehouse bear the date of such deposit plainly stamped thereon.’”

Sections 1155-11 to 1155-19 of the General Code are a part of Chapter 15 and found under the subdivision “Cold Storage”. Said Section 1155-11, to which you refer, provides:

“All food shall at the time it is deposited in any cold storage warehouse bear the date of such deposit plainly stamped thereon. Such food shall also bear a stamp indicating the date of removal. The marking of food as provided in this section shall be under such further regulations as may be prescribed by the Secretary of Agriculture.”

Standing alone, the language of this section is apparently clear and unambiguous. It would appear to be mandatory that each article of food in cold storage should bear the date of deposit “plainly stamped thereon.” Also such food should have a