

The collector acts in the capacity of a servant, receives and accounts for the money in an official or fiduciary capacity.

For these reasons, both of your questions are answered in the negative.

Respectfully,

C. C. CRABBE,

Attorney General.

2774.

COUNTY SURVEYORS REQUIRED TO GIVE ENTIRE TIME AND ATTENTION TO DUTIES OF OFFICE—NO ADDITIONAL COMPENSATION CAN BE PAID FOR SERVICES PERFORMED UNDER SECTION 6691 G. C.

SYLLABUS:

Section 7181, General Code, provides that county surveyors shall give their entire time and attention to the duties of the office, and provides a salary therefor, based on the mileage, population and tax valuation of the county, and does not provide for any additional compensation for added services.

Section 6691, General Code, as amended in house bill No. 1, passed by the 86th general assembly, provides that county commissioners may delegate the duties of county ditch supervisors to the county surveyor, but does not provide any additional compensation to the county surveyor for such services.

COLUMBUS, OHIO, Sept. 11, 1925.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication as follows:

"The county commissioners of Auglaize county, Ohio, in order to secure a more efficient supervisor of ditches, drains and water courses in the several townships of the county, are about to designate the county surveyor of Auglaize county as the ditch supervisor for all townships in the county in which a ditch, drain or water course, or part thereof, has been located, or may hereafter be located, as authorized by section 6691 of the General Code of Ohio, as amended by our last legislature.

"The question arises whether or not the county surveyor could draw the per diem compensation provided for ditch supervisors under the present ditch laws.

"I would, therefore, be pleased to have you advise me whether this per diem compensation, as fixed by law for ditch supervisors, could be legally drawn by our county surveyor in addition to his fixed compensation as surveyor."

Section 6691, General Code, as amended by the 86th general assembly, house bill No. 1, provides as follows:

"In any township or townships in which a ditch, drain or watercourse or part thereof has been or may hereafter be located and constructed, the

county commissioners for the purpose of keeping such ditches, drains or watercourses clean and in repair, may delegate such duty to the county surveyor who shall execute the necessary work and assess the cost thereof in accordance with the provisions of this chapter as they relate to the duties of a ditch supervisor, or employ a ditch supervisor for such township; the same person may be employed as a ditch supervisor for one or more townships in the county; no person shall be so employed unless he is a resident of the county in which he is employed; he may be removed by the county commissioners at any time for cause, and his duties may be delegated to another supervisor or the county surveyor, or another supervisor may be appointed in his place.

"Where the term ditch supervisor is used in this chapter and the duties of ditch supervisor are being performed by the county surveyor, the term 'ditch supervisor' shall be construed to refer to county surveyor."

Concerning the question of compensation for the services of the county surveyor, your attention is directed to section 7181, General Code, which is as follows:

"The county surveyor shall give his entire time and attention to the duties of his office and shall receive an annual salary to be computed as follows: One dollar per mile for each full mile of the first one thousand miles of the public roads of the county; and in addition thereto forty dollars per thousand for each full one thousand of the first fifteen thousand of the population of the county as shown by the federal census next preceding his election; thirty dollars per thousand for each full one thousand of the second fifteen thousand of the population of the county; twenty-five dollars per thousand for each full one thousand of the third fifteen thousand of the population of the county; fifteen dollars per thousand for each full one thousand of the fourth fifteen thousand of the population of the county and five dollars per thousand for each full one thousand of the population of the county in excess of sixty thousand; and also in each county in which on the twentieth day of December, 1915, the aggregate of the tax duplicate for real estate and personal property was twenty-five million dollars or more the sum of fifty dollars, for each full one million dollars, not more than fifteen, by which such tax duplicate exceeded twenty-five million dollars, ten dollars for each full one million dollars, not more than sixty, by which such tax duplicate exceeded forty million dollars and five dollars for each full one million dollars by which such tax duplicate exceeded one hundred million dollars; provided, however, that in no case shall the annual salary paid the county surveyor exceed six thousand dollars. 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 surveyor shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position. When the county surveyor performs service in connection with ditches or drainage works under the provisions of sections 6442 to 6822 inclusive of the General Code of Ohio, he shall charge and collect the per diem allowances or other fees therein provided for, and shall pay all such allowances and fees monthly into the county treasury to the credit of the general county fund. The county surveyor shall do likewise when he performs services under the provisions of sections 2807 to 2814 inclusive of the General Code of Ohio."

It is observed that such salary 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 law also provides that when the county surveyor performs service in connection with ditches or drainage works under the provisions of sections 6442 to 6822 inclusive of the General Code of Ohio, he shall charge and collect the per diem allowances or other fees therein provided for, and shall pay all such allowances and fees monthly into the county treasury to the credit of the general county fund.

It is therefore evident that the legislature at the time of the enactment of section 7181, General Code, attempted to close the doors against the county surveyor receiving any other compensation, under any guise whatever, than that provided by the statute, and his compensation as fixed therein is based on mileage, population and tax valuation of the county.

In Opinions of the Attorney General, 1920, volume I, page 534, the following language is found:

"May the county surveyor legally retain, for his own use, any fees paid to him out of the funds on such improvements in addition to his statutory salary? (See section 7181 G. C. and section 6 of this act.)"

The answer to the above question is as follows:

"The answer to your fourth question is in the negative, by reason of the provisions of section 7181 G. C., which is to the effect, among other things, that the salary of the county surveyor '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 and other allowances, and all other perquisites of whatever kind or description which the county surveyor may collect or receive.' "

In the Opinions of the Attorney General, 1922, volume I, page 477, the following language is found:

"A county surveyor is a public officer whose salary is fixed by statute (Sec. 7181 G. C.) Therefore, the salary is to be treated as an incident to the office itself, and not to the performance of the duties of the office (opinion Vol. I, p. 970, Opinions of Attorney General, 1918)."

It will therefore be observed that the construction placed on section 7181, General Code, is to the effect that the compensation of the county surveyor is definitely fixed therein, and until the legislature makes specific provision for increased or additional compensation, none can be paid.

This section provides that the county surveyor shall give his entire time and attention to the duties of his office, and provides a salary, as the legislature considers, adequate for his entire time and attention. Any additional requirement as to services to be performed could not do more than require his entire time and attention, even though existing duties might be relegated or might require the attention of others.

The additional services provided by section 6691, General Code, may increase the duties of the county surveyor, but they cannot contemplate a compensation for more than the entire time and attention that are provided for in section 7181, General Code.

No additional compensation has been provided for the county surveyor under

house bill No. 1, as passed by the 86th general assembly, and in view of the provisions and limitations of section 7181, General Code, so long as no specific provisions are made for additional compensation therein to the county surveyors, none can be paid.

Respectfully,
C. C. CRABBE,
Attorney General.

2775.

CONSTITUTIONAL OBJECTIONS AGAINST TOWNSHIP PARK LAW
NOT REMOVED BY HOUSE BILL 461.

SYLLABUS:

House bill number 461, as enacted by the eighty-sixth general assembly, designating what was formerly termed "township parks" as "park districts," etc., did not remove the constitutional objections raised against the original act.

COLUMBUS, OHIO, Sept. 11, 1925.

HON. C. B. McCLINTOCK, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—You request my opinion upon a state of facts presented by the Canton Chamber of Commerce, as follows:

"Some years ago the state legislature passed what was known as the Township Park Law, which we understand to be included in sections 3415 to 3427 of the General Code. This was passed at the instance of Youngstown to permit the city to acquire Mills Creek Park and provided for appointment by the common pleas court of a park commission which was given authority to levy taxes and to acquire park areas within or without the township. A number of townships throughout the state acquired park areas under this law.

"An opinion of the attorney general, rendered November 5th, 1920, and found in volume II, pages 1078-1079, refers to an opinion of the former attorney general found in Attorney General's Reports for 1911 and 1912, volume II, page 1350, which holds certain sections to be unconstitutional, principally in that the township park officers are appointed and not elected, which it appears is a constitutional requirement for all township officers vested with authority to levy or expend public funds.

"Two years ago the Canton Chamber of Commerce, through its legal committee, took this matter up with the legal advisers of the Youngstown park commission. Mrs. Ott, of Youngstown, introduced in the last legislature a bill, No. 461, which is designed to correct the defects of the former act.

"The legal committee of the Canton Chamber of Commerce is in doubt as to whether the amendment passed by the last legislature covers and corrects the defects in the former act. The Chamber of Commerce desires to secure from you an opinion as to whether it would be justified in assuming that the law covering the appointment of park boards is constitutional and whether in your opinion they could properly proceed under the act above mentioned."