

4132

AUDITOR—COUNTY—SERVICES TO KEEP RECORD OF PROCEEDINGS OF BUILDING COMMISSION—MAY NOT RECEIVE COMPENSATION IN ADDITION TO REGULAR SALARY AS COUNTY AUDITOR—SECTION 153.30 RC.

SYLLABUS:

The county auditor, in performing the service of keeping the records of the proceedings of the building commission as required by Section 153.30, Revised Code, cannot receive any compensation in addition to his regular salary as county auditor.

Columbus, Ohio, July 21, 1954

Hon. Richard P. Faulkner, Prosecuting Attorney
Champaign County, Urbana, Ohio

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“Champaign County, Ohio is proceeding with the construction of a new court house after the passing of a bond issue and the appointment of a building commission.

“The Champaign County Auditor has been acting as clerk of the Building Commission.

“In view of the provisions of Section 325.02 of the Revised Code, which provides that salaries and compensation of county officers as provided in the chapter on compensation is to be the total received by them, and in view of Section 153.30 of the Revised Code which provides that the county auditor shall keep full and accurate records of all proceedings of the building commission upon the journal of the Board of County Commissioners, the County Auditor desires to know whether he is entitled to compensation for his services as clerk of the building commission.

“Will you kindly advise me as to the propriety of the county auditor receiving compensation when acting as such clerk of the building commission.”

I assume from a reading of your letter, that the question is as to the right of the county auditor to receive personal compensation from a building commission for services in keeping its records, in addition to his statutory salary as auditor.

The building commission is appointed pursuant to Section 153.21, Revised Code, which requires that when the board of county commissioners has determined to erect a court house or other county building at a cost in excess of \$25,000, it shall submit the question of issuing bonds therefor to a vote of the electors; and if the vote is favorable it then becomes the duty of the court of common pleas to appoint a commission of four electors who, together with the members of the board of county commissioners constitute a building commission. The only provision of the law allowing expense funds to the commission is that found in Section 153.23, Revised Code, to wit:

“The necessary expenses for stationery, postage, correspondence, and travel out of the county required in the discharge of the duties of the building commission shall be paid from the county treasury on the order of the board of county commissioners and the warrant of the county auditor.”

Section 153.30, Revised Code, reads as follows:

“Full and accurate records of all proceedings of the building commission shall be kept by the county auditor upon the journal of the board of county commissioners. He shall carefully preserve in his office all plans, drawings, representations, bills of material, specifications of work, and estimates of cost in detail and in the aggregate pertaining to the building.”

It will be observed that this section clearly places upon the county auditor the duty to keep a record of the proceedings of the building commission and to preserve in his office all plans and other papers pertaining to the proposed building.

In the case of *State of Ohio, ex rel. Green v. Edmondson*, 12 O. N. P. (n.s.) 577, Section 2342, General Code, which in substantially the same language is now Section 153.30, Revised Code, was under consideration, and the Common Pleas Court of Hamilton County held:

“A distinct legislative intent appears in the provisions of Section 2342, P. & A. Anno. G.C., that the county auditor shall act as the recording officer of a commission to build a new court house, and a writ of mandamus will issue requiring him so to act, notwithstanding the earlier and in some measure conflicting provision for the appointment of a clerk of the board of county commissioners in place of the auditor.”

The court in its opinion, at page 586, uses the following language:

“The commissioners of Hamilton county have availed themselves of Section 2409 and have appointed a clerk to take the place of the auditor as their secretary, and it is argued that by reason thereof said clerk should perform the duties specifically enjoined upon the auditor under Sections 2341 and 2342. In addition to the fact that the building commission act is a later act and charges such duties upon the auditor specifically and not upon the secretary or clerk of the board of county commissioners, and the further fact that Section 2409 is by its terms and context applicable only to the duties of the auditor in connection with the proceedings of the county commissioners, Section 2409 also contemplates that such duties of the clerk shall be such as to require him ‘to devote his entire time’ to such duties, leaving no time for him to act for the building commission. The Legislature therefore provided that the auditor should act as recording officer of the building commission. For these additional duties he can adequately provide by the appointment, if necessary, of a deputy under Section 2563.

“The recording officer of the building commission is therefore the county auditor, or a deputy appointed by him for such purpose.”

Section 2342, General Code, and the Edmondson case were under consideration by one of my predecessors in Opinion No. 164, Opinions of the Attorney General for 1937, p. 242, where the question was whether the clerk appointed by the county commissioners could be employed by a build-

ing commission to keep its records, and the then Attorney General answered the question in the negative and said:

“You will note in regard to the above section that the duty of keeping these records of proceedings first falls upon the county auditor *as duties enjoined upon him by law.*” (Emphasis added.)

It appears very clear that the duty imposed by Section 153.30 supra, upon the county auditor to keep the record of the proceedings of the Commission is made a part of his regular official duty as county auditor. Accordingly, if that duty is performed by him, personally, it would be simply a part of the work which his salary is intended to cover. It is true that the time and labor involved in keeping this record might overtax his personal time and energy, in which case as indicated by the court's opinion referred to, he could have an additional deputy or clerk do this work for him. Under the provisions of the statute referred to in the opinion, Section 2563, General Code, 325.05, R.C., the auditor is authorized to appoint one or more deputies to assist him in the performance of his duties and according to Section 325.17, Revised Code, the compensation of such deputies is fixed by the auditor within the limitation of the amount appropriated for the conduct of his office.

The salary of the auditor is fixed by Section 325.02, Revised Code. That he cannot personally receive additional compensation from the building commission for keeping its record is clearly indicated by Section 325.02, Revised Code, which provides as follows:

“The salaries and compensation of county officers provided for by sections 325.03 to 325.09, inclusive, of the Revised Code, shall be in lieu of all fees, costs, penalties, percentages, allowances, and all other perquisites, of whatever kind, which any of such officials collects and receives, except such compensation as is provided by section 5731.43 of the Revised Code.”

Section 5731.43 here referred to, relates to inheritance tax matters.

It is accordingly my opinion that the county auditor in performing the service of keeping the records of the proceedings of the building commission as required by Section 153.30, Revised Code, cannot receive any compensation in addition to his regular salary as county auditor.

Respectfully,
C. WILLIAM O'NEILL
Attorney General