

**OPINION NO. 94-026****Syllabus:**

Whether the salary of the county engineer is paid from the county general fund or from the county's share of motor vehicle license and fuel tax revenues, the county engineer has a duty to perform surveying work as prescribed by R.C. 315.18.

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**To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio**  
**By: Lee Fisher, Attorney General, May 17, 1994**

You have requested an opinion concerning the county engineer's duty to perform surveys as directed by R.C. 315.18. Background information provided with your request indicates that the salary of the Brown County engineer is paid entirely from the county's share of motor vehicle license and fuel tax revenues. As mentioned in your letter, both the Ohio Constitution and various statutes limit the purposes for which the funds may be used. The county engineer assumes that certain of the duties imposed by statute upon his office fall outside the purposes for which the county's share of motor vehicle license and fuel tax revenues may be used, and because his salary is paid exclusively from such revenues, he has inquired whether he may not perform his statutory duties if they do not fall within the purposes for which such revenues may be used.

**Motor Vehicle License and Fuel Tax Revenues**

In order to address your question, it is first necessary to consider the constitutional and statutory limitations upon the expenditure of motor vehicle license and fuel tax revenues. Pursuant to Ohio Const. art. XII, §5a:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and *other statutory highway purposes*, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways. (Emphasis added.)

As stated in *Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph one): "Section 5a, Article XII of the Constitution of Ohio, closely restricts the expenditure of the fees and taxes received in relation to vehicles using the public highways to purposes *directly connected* with the construction, maintenance and repair of highways and the enforcement of traffic laws..." (Emphasis added.) In addition to this constitutional description of the purposes for which motor vehicle license and fuel tax revenues may be expended, there are statutory provisions that further describe the purposes for which particular portions of these revenues may be used. See, e.g., R.C. 4503.02 (levy of annual motor vehicle license tax and permitted uses of revenue); R.C. 5735.27 (distribution and use of gasoline excise tax fund and highway operating fund). See generally *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 106 N.E. 41 (1914) (where a statute limits the expenditure of public funds, the funds may not be spent for a purpose not specified in the statute).

An additional purpose for which a county may use its share of motor vehicle license and fuel tax revenues was recently addressed in 1994 Op. Att'y Gen. No. 94-019, which discussed the operation of R.C. 315.12.<sup>1</sup> The question addressed in Op. No. 94-019 was whether the county could use its share of motor vehicle license and fuel tax revenues to pay for the removal of underground fuel storage tanks that had been used to fuel equipment and vehicles of the county engineer's office. The opinion concluded that the cost of such removal was a "cost of operation of the office of county engineer," two-thirds of which shall be paid from the county's share of motor vehicle license and fuel tax revenues, as required by R.C. 315.12(A). Op. No. 94-019 therefore recognized that, by virtue of its enactment of R.C. 315.12(A), the General Assembly has established two-thirds of the cost of operation of the engineer's office as a statutory highway purpose for which motor vehicle license and fuel tax revenues may be expended under Ohio Const. art. XII, §5a.

### County Engineer's Compensation

You question whether the fact that the salary of the Brown County engineer is paid exclusively from motor vehicle license and fuel tax revenues relieves the engineer of the duty imposed upon his office by R.C. 315.18 to survey lands sold for taxes. Because the county engineer is a county officer, his compensation is fixed by the General Assembly. See Ohio Const. art. II, §20 (stating in part: "The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers").

The compensation of the county engineer is provided for in R.C. 325.14(A), which states in part:

Such salary *may* be paid monthly out of the general county fund or out of the county's share of the fund derived from the receipts from motor vehicle licenses, as distributed by [R.C. 4501.04] and the county's share of the fund derived from the motor vehicle fuel tax, as distributed by [R.C. 5735.27] *as the board of county commissioners directs*, upon the warrant of the county auditor and shall be in lieu of all fees, costs, per diem or other allowances, and all other perquisites, of whatever kind, which any engineer collects and receives. The engineer shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position. When such engineer performs services in connection with ditches or drainage works, he shall charge and collect the per diem allowances or other fees provided by law and shall pay all such allowances and fees, monthly, into the county treasury to the credit of the general county fund. The engineer shall pay into the county treasury all allowances and fees collected when he performs services under [R.C. 315.28-.34]. (Emphasis added.)

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<sup>1</sup> R.C. 315.12 states in pertinent part:

(A) Two thirds of the *cost of operation* of the office of county engineer, including the salaries of all of the employees and the cost of the maintenance of such office as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county's share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27]. (Emphasis added.)

The General Assembly has, therefore, given the board of county commissioners the authority to pay the salary of the county engineer either from the county general fund or from the county's share of motor vehicle license and fuel tax revenues. 1988 Op. Att'y Gen. No. 88-081. R.C. 325.14(A) does not, however, limit the statutory duties of the county engineer based upon the source of funds from which his salary is paid.

Just as the General Assembly, through the enactment of R.C. 315.12, has made the payment of two-thirds of the cost of the operation of the county engineer's office a statutory highway purpose that may be paid from the county's share of motor vehicle license and fuel tax revenues, it has also made the payment of the salary of the county engineer, through the enactment of R.C. 325.14(A), a statutory highway purpose, as that term is used in Ohio Const. art. XII, §5a. Thus, even though the General Assembly has imposed upon the county engineer certain "non-highway duties," *see Madden v. Bower*, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969) (recognizing that certain duties of the county engineer (referred to as "non-highway" duties) involve functions unrelated to the planning, construction, improvement, or repair of roads, streets, and highways), it has determined that payment of the salary of the county engineer is itself a statutory highway purpose for which the county may expend its portion of motor vehicle license and fuel tax revenues.

#### **County Engineer's Duties**

You specifically question the county engineer's duty to perform the surveying duties described in R.C. 315.18 if his salary is paid entirely from motor vehicle license and fuel tax revenues. As a creature of statute, the county engineer has those powers and duties assigned to that position by the General Assembly. *AFSCME, Local 1045 v. Polta*, 59 Ohio App. 2d 283, 394 N.E.2d 310 (Erie County 1977). R.C. 315.18 states, in pertinent part: "On the application of any person producing to the county engineer a certificate from the proper officer, such engineer or his deputy *shall* survey all lands which have been sold for taxes, which lie within his county." (Emphasis added.) It is well settled as a rule of statutory construction that the General Assembly's use of the word "shall" in a statute indicates the mandatory nature of the duty so described. *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971). Because R.C. 315.18 provides no exception to the duty it imposes upon the county engineer based upon the source of funds for his salary, the county engineer or his deputy has a mandatory duty to survey lands sold for taxes, as described in R.C. 315.18, whether or not such surveying duties are "non-highway" duties, *see Madden v. Bower*, and regardless of the source of funds from which his salary is paid.

#### **Conclusion**

Based on the foregoing, it is my opinion, and you are hereby advised that whether the salary of the county engineer is paid from the county general fund or from the county's share of motor vehicle license and fuel tax revenues, the county engineer has a duty to perform surveying work as prescribed by R.C. 315.18.