

“\* \* \* by the provisions of Section 4696, General Code, as amended 106 O. L. 396, whenever 75 per cent. of the electors residing in the territory sought to be transferred, petition for such transfer, the county board of education is vested with no discretion in the premises, but is required under the provisions of that section to transfer such territory in accordance with the prayer of the petition filed with it.”

Section 4696, General Code, has been amended in some respects since the decision of the Supreme Court in the case above referred to but the amendments are not such as to make the holding of the case inapplicable to the statute as it now reads.

It makes no difference how the members of the county board of education feel about the matter; even if they are assured that a transfer will be detrimental to the best interests of the schools concerned, they have no discretion in the matter, and are enjoined by law to comply with the prayer of the petition if it contains the requisite number of proper signatures, and is properly drawn and filed. The board should perform its mandatory duty and may be compelled to do so by proper court action.

It will be observed that the statute provides the petition shall be signed by electors. In the case referred to by the superintendent of schools I assume the renters referred to by him possess the qualification of electors. His specific question is based on the premise that the petition is signed by 75% of the voters.” Property owners, as such, are not authorized to sign the petition and they have nothing to say about the matter unless they are also electors residing in the territory sought to be transferred. The purpose of this provision of law is to provide facilities for making such transfers as may be desired by the patrons of the schools, regardless of whether they are property owners or not. Whether or not that be good policy is not for us at this time to concern ourselves. The law so provides, and we are bound by it as it is, whatever view may be held as to the wisdom of the provision.

It should be observed, however, that the mere making of the transfer by the Richland county board of education does not make the transfer complete. The board of education of the Mansfield City School District must first accept the transfer as made, and there is no way to compel the city board to accept a transfer of territory if it does not wish to do so, no matter how many persons petition for it.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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62.

DEPUTY COUNTY SURVEYOR—OCCUPYING POSITION OF COUNTY  
MAINTENANCE ENGINEER—WITHIN UNCLASSIFIED SERVICE.

*SYLLABUS:*

*A deputy county surveyor designated by the surveyor as county maintenance engineer, under the provisions of Section 2788-1, General Code, is in the unclassified civil service of the state, and no examination in such instance is required.*

COLUMBUS, OHIO, February 5, 1929.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

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

"Under Section 2781-1, under the first paragraph, the following language is used:

'The county surveyor shall designate one of his deputies as county maintenance engineer. Such deputy, so designated, shall be a person experienced in the maintenance and repair of roads.'

The question arises whether a county maintenance engineer, as one of the deputies in the office of the county surveyor, can hold such office without being under civil service. The maintenance engineer in this case is distinguished from the maintenance supervisor in the second paragraph. In that case, the appointee is authorized by the county commissioners.

The question that is raised here is whether a civil service examination is compulsory for the deputy appointed by the county surveyor and working out of his office and designated by him as county maintenance engineer."

It is noted that there is no section of the General Code designated by the number which you mention. However, an examination discloses that the quotation your letter contains is from Section 2788-1, of the General Code. Said section provides:

"The county surveyor shall designate one of his deputies as county maintenance engineer. Such deputy so designated shall be a person experienced in the maintenance and repair of roads and it shall be the duty of such maintenance engineer, acting under the general direction and supervision of the county surveyor, to have charge of all road maintenance and repair work carried forward under the supervision of the county surveyor.

The county surveyor, when authorized by the county commissioners, shall appoint a maintenance supervisor or supervisors to have charge of the maintenance of improved highways within a district or districts established by the commissioners and surveyor and containing not less than ten miles of improved county roads. Such maintenance supervisor shall act under the direction of the county surveyor, and the county surveyor, when authorized by the county commissioners, shall establish a patrol or gang system of maintenance under the direct charge of such supervisor. The compensation of such supervisor shall be fixed upon a per diem basis by the county commissioners and shall be paid out of the road repair or county road fund upon the approval of the county surveyor."

In analyzing the provisions of the section above quoted, it is apparent that the so-called county maintenance engineer is nothing other than a deputy county surveyor, whose duties are defined by statute when such designation is made by the surveyor.

By the terms of Section 9 of the General Code, a deputy may perform all and singular the duties of his principal, and the principal shall be answerable for the neglect or misconduct in office of his deputy. It may be pointed out, in this connection, that Section 2788-1, supra, expressly provides that such deputy who has been designated as maintenance engineer shall act under the direction of the county surveyor.

In view of the foregoing, it is believed to be clear that the deputy surveyor, who has been designated as county maintenance engineer, is to all intents and purposes a deputy surveyor, and the fact that his duties have been changed or established by statute, in no wise changes his status as such deputy.

In this connection it will be noted that Section 486-8, General Code, which undertakes to define those in the unclassified and classified civil service of the State, expressly places in the classified service

"The deputies of elective or principal executive officers authorized by law to act for and in the place of their principals and holding a fiduciary relation to such principals."

It is believed to be apparent that in the performance of the duty of the deputy surveyor who has been designated as county maintenance engineer, such deputy is acting for and in the place of the county surveyor, and comes clearly within the exception of the provisions of Section 486-8, *supra*, hereinbefore quoted.

Based upon the foregoing, and in specific answer to your inquiry, you are advised that a deputy county surveyor designated by the surveyor as county maintenance engineer under the provisions of Section 2788-1, of the General Code, is in the unclassified civil service of the State, and no examination in such instance is required.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

63.

DOG AND KENNEL FUND—DEFICIT ARISING FROM LIVE STOCK CLAIMS FILED SINCE AUGUST 10, 1927—PAYMENT WITH REVENUE FROM INCREASED LICENSE FEES AFTER DEDUCTION OF ADMINISTRATION EXPENSES.

*SYLLABUS:*

*Where there was a deficit in the dog and kennel fund on account of live stock claims filed subsequent to August 10, 1927, and the county commissioners increased the license fees for the year 1928 by reason of said deficit, the amount realized from the registration fees in the year 1928, after the payment of expenses of administration of the law, should be used for the payment in full of the claims filed and allowed after the effective date of said law, in the order in which they were allowed.*

COLUMBUS, OHIO, February 5, 1929.

HON. DEANE M. RICHMOND, *Prosecuting Attorney, London, Ohio.*

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

"I respectfully request your opinion on the following facts:

The commissioners of Madison County, Ohio, last January set a certain price for dog licenses for 1928. The amount realized from the sale of these tags is approximately one-half of the animal claims filed in that year. No money except the expenses of the administration of this law has been paid out of this fund. Shall we pay in full the claims as filed from the 10th day of August, 1927, the time the law became effective, and pay as far as this money shall go even though it will only pay a very small portion of the claims of 1928, or shall this money be paid on the claims just filed in 1928 and wait until there is a surplus in this fund to pay the claims filed between August, 1927, and January 1, 1928?"

The law relating to the registration of dogs, the dog and kennel fund and the distribution of the fund was generally amended by the 87th General Assembly (112 O. L. 347).