

but this limitation shall not apply to buildings for a district consisting of two or more counties.

The total net indebtedness created or incurred by any county shall never exceed a sum equal to three per cent of the first one hundred million dollars or part thereof of the tax list, plus one and one-half per cent of the tax list in excess of one hundred million dollars. In ascertaining the limitations of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered:

(a) Bonds issued prior to April 29, 1902, or to refund, extend the time of payment or in exchange for bonds issued prior to April 29, 1902,

(b) Bonds issued heretofore to meet deficiencies in the revenue."

Your attention is particularly directed to the provisions that: First, excepting such bonds as need not be considered in ascertaining the net indebtedness of a county, as therein set forth, such unvoted indebtedness shall never exceed one per cent of the first one hundred million dollars of the tax list of the county, plus one-half of one per cent of the tax list in excess of one hundred million dollars; second, the twenty thousand dollar limitation on unvoted bonds, would not be applicable to your question as the buildings proposed to be constructed are for a district consisting of two counties.

It, therefore, appears that within the limitations prescribed in the foregoing section, bonds may be issued under the provisions of Section 3152, General Code, without a vote of the electors.

Specifically answering your questions, I am of the opinion that:

(1) The board of county commissioners of a county may issue bonds for such county's portion of the cost of the construction, repair, etc., of a district hospital, under the provisions of Section 3152, General Code.

(2) Such bonds may be issued by the board of county commissioners of a county without a vote of the electors, providing the limitation of percentum of net indebtedness of such county, as prescribed in Section 2293-16, General Code, is not exceeded.

Respectfully,
GILBERT BETTMAN,
Attorney General.

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DEPUTY COUNTY SURVEYOR—ASSISTANT—BOTH APPOINTED BY
COUNTY SURVEYOR—WHEN AND HOW COMPENSATION IS PAID.

SYLLABUS:

1. *Under the provisions of Section 2981, General Code, the authority to appoint a deputy county surveyor or assistant is in the county surveyor, and not in the board of county commissioners.*

2. *When the county surveyor has appointed and fixed the compensation of such deputy within the appropriation made therefor by the board of county commissioners, the county auditor is authorized to pay the compensation of such deputy by warrants drawn on the county treasury in the manner provided by law.*

COLUMBUS, OHIO, April 8, 1929.

HON. HARRY M. MILLER, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“Your opinion on the following matters is respectfully requested:

First. Is there any provision other than Section 2411 authorizing the employment of a deputy county surveyor or assistant engineer?

Second. Upon whom does the appointment, fixing of compensation, and term of employment of a deputy county surveyor or assistant engineer rest—the county commissioners or the county surveyor?

Third. Does the fact that the county commissioners have appropriated a sum of money for a ‘deputy surveyor,’ in the absence of any record on the minutes or journal of the county commissioners employing a deputy surveyor or fixing the amount of compensation, authorize the county auditor to pay the salary of an engineer or deputy surveyor appointed by the county surveyor?”

In the consideration of the questions presented in your communication, particularly the first two, therein stated, it will be noted that under the provisions of Section 2981, General Code, the county surveyor, as one of the county officers mentioned in Section 2977, General Code, is authorized to appoint one or more deputy county surveyors and such assistants, clerks, or other employes as may be necessary to carry on the work of his office. Said Section 2981, General Code, as amended 112 O. L. 107, provides:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office.”

Section 2411, General Code, referred to in your communication provides as follows:

“When the services of an engineer are required with respect to roads, turnpikes, ditches or bridges, or with respect to any other matter, and when, on account of the amount of work to be performed, the board deems it necessary, upon the written request of the county surveyor, the board may employ a competent engineer and as many assistant engineers, rodmen and inspectors as may be needed, and shall furnish suitable offices, necessary books, stationery, instruments and implements for the proper performance of the duties imposed on them by such board.”

With respect to the questions here presented, it is quite clear that Sections 2981 and 2411, General Code, have no necessary connection with each other. Whether

the county surveyor has appointed one or more deputy county surveyors under the authority vested in him by the provisions of Section 2981, General Code, the board of county commissioners under the authority of Section 2411, General Code, may employ an engineer for the purposes mentioned in said section upon the written request of the county surveyor.

In an opinion of this department, under date of August 7, 1917, Opinions of Attorney General, 1917, Volume II, page 415, in speaking of an engineer employed under the authority of Section 2411, General Code, it is said :

"The engineer is employed for some specific matter or duty in reference to roads, turnpikes, ditches or bridges. He is employed for some particular work on account of the inability of the county surveyor to perform the same due to the amount of work which he already has on hand to perform. Further, the county surveyor must make a written request for assistants. The engineer so selected upon the request of the county surveyor has certain duties imposed upon him, as is evidenced by the latter part of the section, which provides that he shall be furnished with suitable offices, necessary books, stationery, instruments and implements for the proper performance of the *duties imposed on him by such board of county commissioners.*

In other words, he is the employe of the county commissioners at the request of the county surveyor to perform some certain specific duties. He is a sort of assistant to the county surveyor, selected not by the county surveyor but by the county commissioners. He is in no sense an officer; he is not given general, continuous and official duties to perform."

Further on in said opinion it is said :

"In my opinion Section 2411, General Code, was enacted for the purpose merely of taking care of an emergency. For all the ordinary help which the county surveyor needs he himself appoints assistants and deputies, but when an emergency arises for which his ordinary office help is not sufficient, the county commissioners may, upon the request of the county surveyor, appoint assistants to take care of the emergency. Hence the engineer and the assistants provided for in Section 2411, General Code, are practically assistants to the county surveyor selected not by himself under Section 2788, General Code, but by the county commissioners."

The quotations here made from the former opinion of this department above referred to, make sufficiently clear the difference between the status and duties of the deputy county surveyor or assistant appointed by the county surveyor and those of an engineer employed for special purposes by the board of county commissioners under the authority of Section 2411, General Code.

It follows from what has been here said that Section 2981, General Code, provides the authority for the appointment of a deputy county surveyor or regular assistant; and that the authority to appoint and fix the compensation of such deputy or assistant is in the county surveyor, and not in the board of county commissioners.

With respect to your third question, it is quite obvious from the facts therein stated that the board of county commissioners have not in this case attempted to appoint a deputy county surveyor; but that all it did was to make an appropriation of money under the provisions of Section 5625-29, General Code, 112 O. L. 404, for the purpose of providing for the compensation of a deputy county surveyor appointed or to be appointed by the county surveyor under the authority of Section 2981, General Code. Further answering your third question, it may be said that if the county

surveyor has appointed a deputy and fixed his compensation within the appropriation made therefor by the board of county commissioners, the county auditor is authorized to pay the compensation of such deputy by the issue of warrants on the county treasury in the manner provided by law.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

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FRANCHISE TAX—CINCINNATI SYMPHONY ORCHESTRA—NO LIABILITY FOR 1929 TAX—NOT CORPORATION FOR PROFIT ON JANUARY 1, 1929.

SYLLABUS:

The Cincinnati Symphony Orchestra Association Company is not required to file report and pay the franchise tax for 1929 as it was not a corporation for profit on January 1, 1929.

COLUMBUS, OHIO, April 8, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN :—This will acknowledge receipt of your recent communication which reads as follows :

“Under date of March 6th you rendered to the Secretary of State an opinion holding that The Cincinnati Symphony Orchestra Association Company had the right to file an amendment changing the company from one ‘for profit’ to one ‘not for profit.’ In this connection would you please advise us whether The Cincinnati Symphony Orchestra Association Company would be liable for the 1929 franchise tax ; inasmuch as the amendment changing the corporation from profit to not for profit was filed after January 1, 1929, the date when the liability for franchise fee for the current year attached ?

Would you please, also, give us an opinion covering the case of The Williams Foundry & Machine Company which was dissolved by order of the court on January 21, 1929. Would this company be liable for the 1929 franchise tax, which case comes under the same general section ?”

You refer to my Opinion Number 158, rendered March 6, 1929, to the Secretary of State, upon inquiry as to whether The Cincinnati Symphony Orchestra Association Company had the right to amend its articles of incorporation from a corporation for profit to one not for profit, and said opinion held, as stated in the syllabus, that :

“When articles of a corporation have been filed in the office of the Secretary of State, purporting to be a corporation for profit, but which contain a purpose clause which clearly sets forth a purpose which is not only evidently that of a corporation not for profit, but which precludes the exercise of any purpose for profit and which corporation has, pursuant to such organization, acted solely as a corporation not for profit, its articles may be amended to eliminate such contradictory statements and set forth that it is, in fact, a corporation not for profit.”