

1560.

ROAD MAPS—DUTY OF COUNTY SURVEYOR TO PREPARE SAME—
TIME AS TO WHEN MAPS ARE TO BE COMPLETED, DIRECTORY.

By virtue of section 7188-1 G. C. (107 O. L. 113), read in connection with sections 1187 and 1188 G. C., it is the duty of the county surveyor to prepare the road maps of the county as described in said section 7188-1. The provision in section 7188-2 G. C. to the effect that the terms of section 7188-1 G. C. shall be complied with "not later than the first day of January, 1919" is directory, and does not have the effect of relieving the surveyor of the duties described in said section 7188-1 if he fails to perform them within the limited time.

COLUMBUS, OHIO, September 10, 1920.

HON. BENTON G. HAY, *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

"The county commissioners desire a good and complete road map of the county as the road records are not in good shape. Unless this is done by the surveyor and his deputies as a part of their duties it will cost approximately \$1,500 to get a map such as they desire. The surveyor says his office is too busy to do this work. Is it the duty of the surveyor to do this work for the commissioners, if they want it done?"

Have the commissioners the right to contract with the deputy surveyor for the performance of this work and pay him the \$1,500? The work would be done after regular office hours. Have the commissioners the right to make such a contract with anyone without advertising for bids?"

No statute has been found authorizing the county commissioners on their own account to expend public funds in procuring the making of road maps. That matter, so far as a search of the statutes has revealed, is now covered by enactments relating primarily to the duties of the state highway commissioner and the county surveyor.

Sections 1187 and 1188 G. C. read (108 O. L. Pt. I, 482):

"Sec. 1187. The state highway commissioner or chief highway engineer, may call upon the county surveyor, at any time, to furnish a map or maps of the county showing distinctly the location of any rivers, railroads, streams, township lines, cities, villages, public highways and deposits of road material, together with any other information that may be required by said commissioner or engineer. Such information and maps shall be furnished by such surveyor in such form as the state highway commissioner may require. A copy of such maps, plats or other information shall be kept on file in the office of the county surveyor."

"Sec. 1188. The county surveyor shall have the right to call upon the township trustees or township highway superintendents to furnish any part of the information called for by the preceding sections, and such officials when so called upon to furnish such information shall be paid their usual per diem in the regular manner for the time employed in furnishing the same."

These sections, which appeared in the so-called Cass Highway Act (see 106 O. L. 626) in practically the same form as just quoted, took the place of former sec-

tion 1184-1 G. C., repealed by the Cass Act. Said section 1184-1 was to the effect that the county commissioners "within sixty days after the passage of this act" should upon request of the state highway commissioner, cause the county surveyor to make an accurate map of the county, showing among other things the public highways of the county, which highways shall be given a designating name or number."

As part of the so-called White-Mulcahy Act, section 7188-1 G. C. was enacted, reading:

"The county surveyor of each county, under the direction and supervision of the state highway commissioner, shall name and number all the public roads of his county, other than intercounty highways and main market roads, and shall number all the bridges and culverts on such roads. All such roads shall be divided into sections where they are of sufficient length to warrant the same. Such sections shall not exceed three miles in length and shall be numbered consecutively. The provisions of this section shall extend to all roads on the north and east lines of each county. A map of such roads shall be made by the surveyor which shall show and identify by number, location and length each such road and section thereof and all bridges and culverts. Such map shall show the location of municipal corporations, school houses, churches, lakes and rivers and shall be made in township units. As rapidly as the roads, bridges and culverts of each township are thus located and numbered, the county surveyor shall enter in a book in his office to be kept for that purpose, a description or identification thereof. A copy of such map shall be submitted to the state highway commissioner, together with a report showing plainly and definitely the exact location of such numbered roads, and sections thereof and such bridges and culverts, and such other and further information as the state highway commissioner may require. All the duties required by this section shall be performed in accordance with the instructions of the state highway commissioner, who shall prescribe such forms and issue such instructions as he deems proper. Upon the approval by the state highway commissioner of each map and report, copies of the same shall be filed by the county surveyor in his office and in the office of the county commissioners, and a copy of the map of each township shall be filed with the township trustees of such township; and thereafter the road names, numbers and section designations and the bridge and culvert numbers shall be the official terms by which all such roads, and sections thereof and such bridges and culverts shall be known. When a new road is established it shall be assigned by the county surveyor a name and number and if necessary divided into sections, or it may be added to an existing road, and it shall be the duty of the county surveyor to note such new road together with its official designation on the copy of the map on file in his office and to report the same to the state highway commissioner and county commissioners."

In the light of the broad provisions of the several sections noted, it is plain that the county surveyor is under the duty of preparing a road map of the county and furnishing the county commissioners with a copy. It is quite true that in section 7188-2 there is a sentence reading

"The provisions of this and the preceding section shall be fully complied with in all the counties and townships of the state not later than the first day of January, 1919,"

but this sentence when applied to section 7188-1 is clearly directory and not mandatory in the matter of time, especially as a continuing duty is imposed on the county surveyor by the provisions of the last sentence of said section 7188-1, as well as by the provisions of section 1187. In short, the element of time specified in the sentence last quoted was intended to secure a prompt compliance with the terms of section 7188-1, and does not go to the essence of the action prescribed by the latter section; for which reason, a failure of the county surveyor to act within in time limited does not relieve that officer of the duty cast upon him by the several sections quoted above.

The assistance needed by the surveyor in the matter of making the maps in question may of course be taken into account in connection with the surveyor's "salary fund" allowance as mentioned in section 2980 G. C. (108 O. L. Pt. II, p. 1216).

General answer to your inquiries may therefore be made by the statement that it is the duty of the county surveyor, under the direction and supervision of the state highway commissioner to prepare and furnish the county commissioners a copy of a road map of the county as described in section 7188 G. C.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1561.

SCHOOLS—PRINCIPAL OF HIGH SCHOOL OR GRADE SCHOOL IF NOT EMPLOYED AS SUPERINTENDENT IS STILL A TEACHER WITHIN MEANING OF SECTION 7600 G. C.—HOW FUNDS PROVIDED IN SECTION 7600 G. C. ARE TO BE DISTRIBUTED WHERE HIGH SCHOOL PRINCIPALS AND GRADE SCHOOL PRINCIPALS ARE TEACHERS.

In the light of section 7705, G. C., the principal of a high school, or a grade school, if not employed as a superintendent, is still a teacher within the meaning of section 7600 G. C. and distribution of the funds mentioned in such section should be made on the basis that high school principals and grade school principals are teachers within the meaning of such section.

COLUMBUS, OHIO, September 10, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of August 24, 1920, requesting opinion of this department on the following statement of facts:

"According to section 7600 G. C. 'The annual distribution attributable to teachers and employes shall be according to the following schedule: Twenty-five per centum of the salary of each teacher receiving a salary of not less than eight hundred dollars and a like percentage of the compensation paid to each person giving instruction in trade or technical schools, extension schools, night schools, summer schools and other special school activities, but not to exceed six hundred dollars for any such teacher or other person,' and further,