

1545.

COUNTY SURVEYOR—COMPENSATION OF ASSISTANTS AND DEPUTIES FOR SERVICES IN MAKING PLANS AND SURVEYS FOR PROPOSED STATE HIGHWAY IMPROVEMENT PAID FROM COUNTY SURVEYOR'S SALARY FUND—HOW COUNTY REIMBURSED—COMPENSATION FOR SERVICES IN DITCH IMPROVEMENT, PAID OUT OF SURVEYOR'S SALARY FUND—HOW COUNTY REIMBURSED.

1. *Under sections 2977 G. C. et seq. as amended 108 O. L. (Part II) 1203, 1216, the compensation of assistants and deputies of county surveyor for services in preparing preliminary plans and surveys for proposed state highway improvement (section 1219 G. C.) is to be paid from county surveyor's salary fund. To the extent that the county may be entitled to reimbursement, moneys collected in reimbursement are to be credited to the general county fund. In the matter of compensation of said assistants and deputies for services in superintendence and inspection during progress of work, reference is made to opinion dated April 20, 1918, Opinions of Attorney General, 1918, Vol. I, p. 584.*

2. *Under said sections 2977 G. C. et seq., compensation of county surveyor's assistants and deputies for services in ditch improvement, is also to be paid out of surveyor's salary fund; reimbursement of county to be made through return to the general county fund from general ditch improvement fund, as noted in Opinion No. 957 of date January 23, 1920.*

COLUMBUS, OHIO, September 1, 1920.

HON. J. H. FULTZ, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—You have submitted to this department a request for an opinion in connection with two questions submitted by your county surveyor, as follows:

(1) Does the money paid to the deputies, assistants, chainmen, clerks, etc., in the county surveyor's office on state road work when surveyor is resident engineer come out of appropriation allowed to surveyor's office by the county commissioners?

(2) Same question on ditch work.

The surveyor's inquiries are to be answered by reference chiefly to sections 2977 et seq., as amended by Act 108 O. L. (Pt. II), pp. 1203, 1216. Said act became effective May 20, 1920. It repeals sections 2787 and 2788, which had theretofore governed in the matter of annual allowance for assistants, deputies, etc., in the office of county surveyor; and in lieu of the provisions of said sections makes applicable to the county surveyor, through the medium of amendment of sections 2977 et seq. the same procedure in the matter of annual allowance as is to be followed in the case of other county officers.

Section 2977 reads:

"All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Section 2980 provides in substance that the officers named in section 2977 are to file with the county commissioners on the first Monday of November a detailed statement

“of the probable amount necessary to be expended for deputies, assistants, bookkeepers, clerks and other employes, except court constables, of their respective offices,”

during the ensuing calendar year. The commissioners are then to fix an aggregate sum which is to be available for expenditure for the purpose and during the period indicated. The sum fixed is to be reasonable and is to have reference to the amount turned over to the county by the respective offices through earnings during the next previous year ending September 30th.

“In case of emergencies arising, the county commissioners shall make additional allowances upon application by the proper officer, stating all the facts in connection therewith. * * * The allowances and any additional allowances so made shall be certified to by the county commissioners and filed with the county auditor, who shall transfer said amounts thus fixed from the general county fund to a separate salary fund for each of said offices. Any officer or taxpayer who is not satisfied with the allowances thus made shall be entitled to the right of appeal to the court of common pleas.”

Section 2981 provides, among other things, that the several county officers in question may employ necessary assistants, deputies, etc.; fix their compensation within the aggregate salary allowance; and discharge them.

Section 2983 provides:

“On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, provided that none of such officers shall collect any fees from the county; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind which have been due in his office, and unpaid for more than one year prior to the date such statement is required to be made.”

These broad provisions and the legislative policy embodied in them are clearly to the point that all revenue accruing from the official activities of the several county officers in question are to go into the general county fund. Hence, the occasion or source of the revenue is immaterial,—if it has accrued, or is to accrue, from official services rendered by the officers or those under them, it is to be paid into the county treasury to the credit of the general county fund. That fund, in turn, is the basic one out of which the salary fund is transferred. Plainly, then, the surveyor is to take into account in making up his statement “of the probable amount necessary to be expended” for assistance, the entire range of his official duties, whether highway improvement or maintenance, ditch work, land surveying or other activity. If, ultimately, through the medium of assessments against affected lands, revenue arises from land-owners through their being liable for payment for services rendered by the surveyor or his employes as to a given improve-

ment, that revenue goes to the general county fund in reimbursement of expense to which the county has been put in the first instance by reason of such services.

In addition to the general provisions of sections 2977 et seq., now applicable to county surveyors, there are provisions applying exclusively to that officer, to the effect that he shall be on a salary basis and that the salary is to be in lieu of fees, costs, allowances, per diem and all other perquisites. (Sec. 7181 G. C.) It may be noted in passing, also, that section 5552 G. C. relating to tax map draughtsmen, has been amended (108 O. L., Pt. II, p. 1229) so as to permit the surveyor to make appointments and fix salaries, subject to the approval of board of county commissioners, thus approximating, at least, the procedure in the matter of appointment and compensation of other employes of the surveyor's office.

We are thus left with no ground for the implication that because a part of the services of the surveyor's assistants on state road work and on ditch work are not strictly "public services" or "county services" in that such part is paid for by private individuals, the compensation attributable to such part is not to be taken into consideration when the surveyor files his statement of prospective salary expense. Nor is weight to be attached to the point that the surveyor cannot know in advance the number of improvements that will be petitioned for,—a similar condition prevails as to all county officers, and is recognized by the statute in that the officers are to state only the "probable amount necessary" for salaries and in that provisions are made for emergencies.

It is perhaps proper to make mention here of an opinion of this department dated May 19, 1917, Opinions of Attorney-General, 1917, Vol. I, p. 721, wherein the conclusion was reached as shown by the headnote:

"The report made by the county surveyor to the county commissioners, under the provisions of section 2787 G. C., should not include those deputies and assistants who do not receive their pay from the general county fund. Neither should the total compensation reported to the county commissioners include compensation not drawn from the general county fund."

It will be noted that said opinion was rendered not only before the recent repeal of sections 2787 and 2788, but also before the becoming effective of the amendment of section 7181 by the so-called White-Mulcahy Act (107 O. L. 110). It was not until the latter act was passed that the county surveyor's office was placed entirely on a salary basis,—this department on September 20, 1915 (Opinions of Attorney General, 1915, Vol. II, p. 1785) having held that the salary fixed for the county surveyor by said section 7181 as appearing in the so-called Cass Act (106 O. L. 612) did not cover that officer's services in ditch work, private surveys, and preparing tax maps. It is therefore plain that the opinion of May 19, 1917, of which the headnote is quoted above, dealt with an entirely different statutory situation than that now prevailing.

Reference may also be made to the following language appearing in an opinion of my predecessor of date April 20, 1918, Opinions of Attorney-General, 1918, Vol. I, p. 584, in connection with certain engineering costs on state road work to be borne half by the state and half by the county or township:

"So that none of the costs thereof would be borne by the county surveyor, out of his annual allowance. Half of the cost and expense is an obligation of the county * * * and it is my opinion that this half would be paid from the general county fund, as it is a general obligation of the county."

This statement of my predecessor would seem to have been inaccurate in that

if the engineering services then in question were a "general obligation of the county," that fact would be ground for their coming within the purview of surveyor's salary allowance, rather than otherwise. Furthermore, my predecessor seems not to have taken account of the provision that the salary allowances for the surveyor's office were payable out of the general fund (see sections 2787 and 2788 as appearing 107 O. L. 70), and not, as under the recent amendments, out of a special salary fund. In any event, the real point at issue in said opinion was whether the services in question might be charged to a specific improvement; and as this point was not determinable by the question of what county fund was chargeable with payment for the services, the language quoted may be treated as *obiter*.

The first question submitted by your surveyor refers in general terms to the services of assistants, deputies, etc., on state road work. It should be kept in mind in this connection that the surveyor in estimating the annual salary allowance, is concerned with the compensation of his deputies, assistants, etc., for the time required on state road work, to the extent only that the employes in question may be rendering service under the direction of the county surveyor. If such employes are temporarily engaged for purposes of superintendence and inspection of state road work during progress of construction, then their employment is under the state highway commissioner, and their compensation while so engaged is as a matter of practice taken care of through a pay-roll arrangement between state and county and is finally charged to specific improvements in proportion as state, county, township and property owners may be bearing the cost. Of course, the surveyor's allowance for salaries for employes is not to take into account the time that such employes are rendering service under the direction of the state highway commissioner; nor is the surveyor's salary fund to be charged with amounts that may be paid out by the county in connection with the pay-roll arrangement mentioned. A discussion of the distinction between engineering services in the making of preliminary plans and surveys, and services in supervision and inspection during progress of construction work is given in the previous opinion of this department last referred to (Op. 1918, Vol. I, p. 584).

The matter of services of county surveyor and his assistants in connection with ditch improvement work was discussed in an opinion of this department (No. 957) of date January 23, 1920, rendered to the Bureau of Inspection and Supervision of Public Offices. In that opinion the first conclusion reached was:

"Under the New Ditch Code (108 O. L. 926) the services of the county surveyor and of such employes as chainmen, axemen and rodmen in connection with a ditch improvement, are not to be calculated on a fee basis, but are to be calculated and assessed against affected lands at actual cost to the county as represented by the proportionate part of the salary of the surveyor and the proportionate part of the compensation of his assistants and employes as fixed by him under the provisions of section 2788 G. C. The amount of such salary and compensation so assessed is to be returned to the general fund out of the general ditch improvement fund."

A copy of that opinion has already been furnished you and it is unnecessary here to repeat what was said therein. It is sufficient to say that the compensation of the county surveyor's assistants for time spent on ditch improvement work is to be paid out of the surveyor's salary fund mentioned in section 2980 G. C., and that the county will receive reimbursement through return to the county general fund from the general ditch improvement fund of the amount of said compensation that is assessed to given improvements.

In conformity with the foregoing, you are advised in specific answer to the inquiries submitted.

1. Under sections 2977 G. C. et seq. as amended 108 O. L. (Pt. II) 1203, 1216, the compensation of assistants and deputies of the county surveyor for services in preparing preliminary plans and surveys for a proposed state highway improvement (section 1219 G. C.) is to be paid from the county surveyor's salary fund. To the extent that the county may be entitled to reimbursement, moneys collected in reimbursement are to be credited to the general county fund. In the matter of compensation of said assistants and deputies for services in superintendence and inspection during progress of work, reference is made to opinion dated April 20, 1918, Opinions of Attorney General, 1918, Vol. I, p. 584.

2. Under said sections 2977 G. C. et seq., the compensation of the county surveyor's assistants and deputies for services in ditch improvement, is also to be paid out of the surveyor's salary fund; reimbursement of the county to be made through return to the general county fund from the general ditch improvement fund, as noted in Opinion No. 957 of date January 23, 1920.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1546.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN
ASHLAND COUNTY, OHIO.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

COLUMBUS, OHIO, September 3, 1920.

1547.

ROADS AND HIGHWAYS—SUBJECT TO CONSENT OF MUNICIPALITY,
TOWNSHIP TRUSTEES MAY ENTER INTO AN AGREEMENT WITH
COUNTY COMMISSIONERS FOR IMPROVEMENT OF CITY OR VIL-
LAGE STREETS LYING ALONG LINE OF INTER-COUNTY HIGH-
WAYS AND COUNTY ROADS—MAY USE FUNDS ARISING FROM
LEVY UNDER SECTION 3298-15d G. C.

Subject to the consent of the municipality, whether city or village (section 6949 G. C.), township trustees may under authority of section 6921 G. C. enter into an agreement with county commissioners for the improvement of city or village streets lying along the line of inter-county highways and county roads, and for the purposes of such agreement may make use of funds arising from levy under section 3298-15d G. C. Authority to make such use is not affected by the fact that the trustees have also made the road district tax levy mentioned in section 3298-44 G. C.

COLUMBUS, OHIO, September 7, 1920.

HON. CALVIN D. SPITLER, *Prosecuting Attorney, Tiffin, Ohio.*

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

“Clinton township, Seneca county, Ohio, has been levying annually for road purposes on the property within its boundaries in the corporate limits of the city of Tiffin under the provisions of section 3298-15d, under section 3298-1, 3298-15n, inclusive, 3370 to 3376 inclusive.