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1. SANITARY ENGINEERING DEPARTMENT—APPOINTEE, SANITARY ENGINEER—MUST BE REGISTERED PROFESSIONAL ENGINEER—SECTION 6602-1 G. C.—POPULATION OF COUNTY—EXCEEDING 100,000—COUNTY COMMISSIONERS.
2. REGISTERED SURVEYOR—NOT A PROFESSIONAL ENGINEER—CAN NOT LEGALLY DISCHARGE DUTIES OF COUNTY SANITARY ENGINEER—SECTION 1083-1 ET SEQ., G. C.

SYLLABUS :

1. Under the terms of Sections 6602-1, General Code, in the case of any county having a population exceeding 100,000 wherein the board of county commissioners creates and maintains a sanitary engineering department, the person who is appointed to be sanitary engineer must be a registered professional engineer.

2. A person who is a registered surveyor under the terms of the act providing for a state board of engineers and surveyors (Section 1083-1 et seq., General Code), but lacking registration thereunder as a professional engineer, cannot legally discharge the duties of county sanitary engineer as defined by Section 6602-1, General Code.

Columbus, Ohio, April 5, 1948

Mr. Robert N. Waid, Secretary, State Board of Registration for
Professional Engineers and Surveyors
Columbus, Ohio

Dear Sir :

Your request for my opinion reads :

"Your opinion is respectfully requested in connection with the following under Sections 1083-1 and 2, General Code, prescribing the practice of professional engineers.

"The Board is in receipt of information to the effect that one or more counties of the state have already, or contemplates the employment of a registered surveyor who is not a registered professional engineer, in the position of County Sanitary Engineer.

"In this capacity, he will have full supervisory charge and control of all things pertaining to design, installation and maintenance of sewerage and water systems in the county.

"1. Can one not registered and admitted to practice as Professional Engineer under the provisions of Section 1083-1 et seq., General Code, hold the office and discharge the duties of County Sanitary Engineer ?

2. Can one registered and admitted to practice as Surveyor under the provisions of Section 1083-1 et seq., General Code, hold the office and discharge the duties of County Sanitary Engineer ?

"Thanking you to advise the Board regarding the above questions 1 and 2, we remain."

Section 6602-1, General Code, which will be quoted from more extensively later herein, contains this language :

“* * * In any county having a population exceeding 100,000, the board of county commissioners may create and maintain a sanitary engineering department, to be under their supervision and in charge of a competent *sanitary engineer*, to be *appointed* by such board of county commissioners, for the purpose of aiding them in the performance of their duties under sections 6602-1 to 6602-14, inclusive, of the General Code, * * *.” (Emphasis added.)

It will be assumed, for the purposes of this opinion, that your inquiry was intended to relate to the qualifications of the person whose appointment is authorized by the above language in said Section 6602-1, General Code. But in this connection it is noted that you have referred to the “office” of county sanitary engineer. Whether said engineer is an “officer” as that term is customarily understood need not be specifically determined. The conclusion that has been reached herein does not pivot on that proposition. Therefore, in passing, I merely call your attention to an opinion of one of my predecessors found in Opinions of the Attorney General for 1931, Vol. 1, page 90 wherein the first branch of the syllabus reads:

“1. A sanitary engineer, appointed by a board of county commissioners in a county with a population exceeding 100,000 in which there has been created and maintained a sanitary engineering department, is not a public officer.”

During the course of this opinion the Attorney General for 1931 said:

“That the position of county sanitary engineer, as created by said Section 6602-1, General Code, is not such as to make said engineer a public officer is clear, * * *.”

“In my opinion, a county sanitary engineer whose position is created, as was that of the county sanitary engineer in Montgomery County, is a mere employe of the county * * *.”

As previously suggested aforementioned Section 6602-1, General Code, is somewhat lengthy. However, I feel obliged to set forth the same herein except for the last paragraph thereof which prescribes certain penalties to be imposed in event a person tampers with or damages any sewer or sewage disposal plant, etc. With the exception just noted said Section 6602-1, General Code, reads:

“For the purpose of preserving and promoting the public health and welfare, the boards of county commissioners of the several counties of this state may, by resolution, lay out, establish

and maintain one or more sewer districts within their respective counties, outside of incorporated municipalities, and may cause to be made by a competent *sanitary engineer* such *surveys* as may be necessary for the determination of the proper boundaries of such districts. Each district shall be designated by an appropriate name or number. Any board of county commissioners may acquire, *construct*, maintain and operate such main, branch, intercepting, or local sewer or sewers within any such sewer district, and such outlet sewer or sewers and sewage treatment or disposal works within or without such sewer district, as may be necessary to care for and conduct the sewage or surface water from any or all parts of such sewer district to a proper outlet, so as to properly treat or dispose of same. Any such board of county commissioners may *employ* a competent sanitary engineer for such time or times, on such terms as they deem best, and may authorize such *engineer* to employ necessary assistants upon such terms as may be fixed by said board. In any county having a population exceeding 100,000, the board of county commissioners may create and maintain a sanitary engineering department, to be under their supervision and in charge of a competent *sanitary engineer*, to be *appointed* by such board of county commissioners, for the purpose of aiding them in the performance of their duties under sections 6602-1 to 6602-14, inclusive, of the General Code, or their other duties regarding sanitation provided by law; and said board shall provide suitable rooms for the use of such department and shall provide for and pay the compensation of such *engineer* and all necessary expenses of such *engineer* and department which may be authorized by such board. Any such *sanitary engineer* in charge of such sanitary engineering department, so appointed by such board of county commissioners, may, with the approval of such board, appoint necessary assistants and clerks and the compensation of any such assistants and clerks shall be fixed and paid by such board.

“The board of county commissioners may make, publish and enforce rules and regulations for the *construction*, maintenance, protection and use of sewers and sewer improvements in their respective counties outside of incorporated municipalities, and of sewers and sewer improvements within incorporated municipalities in their respective counties wherever such sewers are *constructed* or operated by such board or discharge into sewers or sewage treatment plants *constructed* or operated by such board, including the establishment and use of connections. Such rules and regulations shall not be inconsistent with the laws of the state of Ohio or the rules and regulations of the state department of health. No sewers or sewage treatment works shall be *constructed* in any county outside of incorporated municipalities by any person, firm or corporation, until the plans and specifications for the same shall have been approved by the board of county commissioners, and

any such *construction* shall be done under the supervision of the county *sanitary engineer*, and any person, firm, or corporation, proposing or *constructing* such improvements, shall pay to the county all expenses incurred by the commissioners in connection therewith. The *sanitary engineer* shall have the right to enter upon any public or private property for the purpose of making *surveys or examinations necessary for the laying out of sewer districts or designing sewers or treatment works*, and to make such surveys and examinations. No person, firm, or corporation shall forbid or interfere with the sanitary engineer or his duly authorized assistants entering upon such property for such purpose or making such surveys or examinations. If, however, actual damage is done to property by the making of such surveys and examinations, the commissioners shall pay the reasonable value of such damage to the owner of the property damaged, and such cost shall be included in the assessment upon the property benefited by the improvement for which such surveys and examinations are made.”
(Emphasis added.)

Kindly note the recurring use of the word “engineer” and the reference to his duties involving “construction” as well as surveying. While it is manifest that a registered surveyor possesses the legal qualifications to perform some of the duties prescribed by said Section 6602-1, General Code, it is also manifest that he does not possess the legal qualifications to perform all of the duties contemplated by the section in question. This is made apparent from an examination of the act providing for the creation of the state board of registration for professional engineers and surveyors (Section 1083-1, et seq., General Code), which became effective September 28, 1933, (115 O. L. 355). Attention is now directed specifically to Section 1083-2, General Code, which defines the practice of professional engineering in this language:

“The practice of professional engineering within the meaning and intent of this act includes any professional service, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation, in connection with any public or privately owned public utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare, or the safeguarding of life, public health or property is concerned or involved, when such professional service requires the application of engineering principles and data.”

The practice of surveying is defined by this same section as now set forth:

“The practice of surveying, within the meaning and intent of this act, shall be held to mean that branch of engineering and applied mathematics which teaches the art of surveying and measuring the area of any portion of the earth’s surface, the lengths and directions of the bounding lines, the contour of the surface, for their correct determination and description and for conveyancing, or for recording, or for the establishment or reestablishment of land boundaries and the plotting of lands and subdivisions thereof; and like measurements and operations involved in the surveying of mines, and commonly known as ‘mine surveying.’”

It might next be noted that under the terms of Section 1083-20, General Code, certain persons are exempted from the operative effect of the act just mentioned. In the case of political subdivisions of the state the exemption applies to all *elective officers* while in the practice of professional engineering or surveying. In the instance of the government of the United States the exemption is much broader and extends to officers and employes. The reason why the exemption applies to employes of the government need not here be the subject of consideration.

It may be pertinent to state that Section 6602-1, General Code, came into existence in its present form in 1927 (112 O. L. 275). At that time there was no law in force and effect which provided for the registering of persons desiring to practice engineering or surveying. But it does not follow that, merely because the General Assembly has not thus far seen fit to amend said Section 6602-1, General Code, the present requirements as to registration can be completely ignored. As stated in Crawford on Statutory Construction, Sec. 227, p. 420: “Every statute should be regarded as a part of the whole body or system of law.” Section 6602-1, General Code, must be interpreted in the light of the later legislation heretofore mentioned. When this is done the conclusion can be formulated that a person, in order to be eligible to serve as a county sanitary engineer, must be a registered *professional* engineer.

A few brief observations might also be in order at this point with respect to the significance of the word “professional” when associated with “engineer”. The term “professional” as applied to services rendered implies requirement of knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study. *People v. State Taxation Commission*, 282 N. Y. 407; 26 N. E. 2d 955. There is no hesitancy in concluding that, as used in the legislation

here under consideration, the word "professional" was intended to denote skill or training. There is no merit to any suggestion that because Section 6602-1, General Code, merely refers to an "engineer" a person other than a "professional" engineer was contemplated as being eligible to hold the position therein provided for. Under that view of the matter a person who has not demonstrated his fitness and ability to practice professional engineering would, as a public employe, be in responsible charge of construction work which he could not legally perform if engaged in private employment.

A question somewhat similar to that presented by your present inquiry was recently the subject of consideration. In my opinion No. 2827, dated March 2, 1948, it was held, as disclosed by the syllabus thereof, as follows:

"A person who is a registered surveyor under the terms of the act providing for a state board of engineers and surveyors (Section 1063-1, et seq., General Code), but lacking registration thereunder as a professional engineer, cannot legally discharge the powers and duties of the office of engineer of a municipality as defined by Sections 4364 and 4366, General Code."

Much that was set forth in that opinion would be here applicable. Consequently, your attention is respectfully directed to the opinion above noted.

In specific answer to your inquiry you are therefore advised as follows:

1. Under the terms of Section 6602-1, General Code, in the case of any county having a population exceeding 100,000 wherein the board of county commissioners creates and maintains a sanitary engineering department, the person who is appointed to be sanitary engineer must be a registered professional engineer.

2. A person who is a registered surveyor under the terms of the act providing for a state board of engineers and surveyors (Section 1083-1, et seq., General Code), but lacking registration thereunder as a professional engineer, cannot legally discharge the duties of county sanitary engineer as defined by Section 6602-1, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.