

489.

APPROVAL, LEASE TO NEWBURGH AND SOUTH SHORE RAILWAY COMPANY.

COLUMBUS, OHIO, May 14, 1927.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your letter dated May 13th, 1927, in which you enclose the following lease in triplicate, for my approval:

NAME	Valuation
To The Newburgh and South Shore Railway Co., -----	\$11,666.67

I have carefully examined said lease, find it correct as to legality and form, and am therefore returning same with my approval endorsed thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.

490.

COUNTY SURVEYOR — MAY NOT PERFORM SERVICES FOR CITY WHEN SAID SERVICES ARE NOT PART OF HIS DUTY—DEPUTY COUNTY SURVEYOR MAY PERFORM SERVICES FOR CITY OR ANY OTHER CORPORATION WHEN SAID SERVICES ARE NOT INCONSISTENT WITH DUTIES OF HIS OFFICE.

SYLLABUS:

1. *A county surveyor may not perform services for a city when such services are not a part of his duties as county surveyor.*
2. *This prohibition cannot be removed by the officer charging the city for said services and paying the money so received into the county treasury.*
3. *A deputy county surveyor may be employed for part time and during that portion of his time which is not required under his appointment as deputy county surveyor, he may perform services for a city or any other corporation or person providing said services are in nowise inconsistent with the duties of his office.*

COLUMBUS, OHIO, May 14, 1927.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“Is it lawful for the County Surveyor or his Deputies, when not busy with work for the county, to work for the city, such as surveying streets therein etc., if they charge the city for the same and place the money

so earned in the general fund of the county, and do not in any way receive any of such money for their own personal gain?"

Your letter presents two questions:

(1) May the county surveyor, when not busy with the work of the county, perform work which is not required of him as county surveyor for a city, if he pays the money which he receives for such work into the general fund of the county treasury?

(2) May such services be performed by one of his deputies?

Your first question is answered by Section 7181 of the General Code, which reads in part as follows:

"The county surveyor shall give his entire time and attention to the duties of his office, and shall receive an annual salary to be computed as follows: * * *"

In order to ascertain the duties prescribed by law for the county surveyor examination of many statutes is required, and it would be impractical and is unnecessary to quote or refer to them in this opinion.

I am assuming, however, that your question refers to work which is not required of the county surveyor, either by statute or by the county commissioners.

The section above quoted in part specifically provides that the surveyor shall give his entire time and attention to the duties of his office, and this in effect forbids him performing any other services. The fact that he would make a charge for services rendered to other persons or corporations and pay the money received for the same into the county treasury would not be a compliance with the statute. The provision is not that he shall pay all moneys which he receives for engineering services into the county treasury, but that he shall "give his entire time and attention to the duties of his office."

This language is so plain that it needs no interpretation and clearly prohibits the county surveyor from performing any services for a city unless such duty is imposed by law.

There is no provision of statute which makes it the duty of the county surveyor to make surveys of streets for purely municipal purposes.

With reference to the right of the county surveyor's deputies to so act, a different question is presented.

Section 2977 of the General Code, found in the chapter of "Salaries of County Officers", refers to the various county officers, including the surveyor.

Section 2981, in the same chapter, 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 monthly from the county treasury, upon the warrant of the county auditor. * * *"

Section 2411 of the General Code, is also somewhat in point:

"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."

I find no provision of law that requires any of the deputies or other employes of the county surveyor to give their entire time and attention to the duties of the office. This is a matter for the county surveyor to determine. If he finds that it is not necessary to employ his deputies, or any one of them, for full time, such arrangements can be made and such fact be taken into consideration in the fixing of the deputies' compensation. If the county surveyor does not require his deputy to devote his entire time to the duties of his office, when not on duty as such deputy, the deputy may do any other work that is not inconsistent with his employment by the county; and if the deputy wishes to work for a city, when such work is not connected with the duties required of the county surveyor, there is no law which would prevent him from so doing.

I find no authority, however, for such deputy to perform work for a city in his capacity as deputy county surveyor and make any charge therefor under the fees prescribed by law and pay such fees into the county treasury.

Therefore answering your question specifically I am of the opinion:

(1) That a county surveyor may not perform services for a city when such services are not a part of his duties as county surveyor.

(2) This prohibition cannot be removed by the officer charging the city for said services and paying the money so received into the county treasury.

(3) A deputy county surveyor may be employed for part time and during that portion of his time which is not required under his appointment as deputy county surveyor, he may perform services for a city or any other corporation or person providing said services are in nowise inconsistent with the duties of his office.

Respectfully,

EDWARD C. TURNER,
Attorney General.

491.

GAME REFUGE LEASES—8 APPROVED—1 DISAPPROVED.

COLUMBUS, OHIO, May 14, 1927.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letter of May 3rd, 1927, in which you enclose the following game refuge leases, in duplicate, for my approval: