

Section 14615 G. C. is as follows: 'The county surveyor, his deputies, and assistants shall not contract for or carry on any engineering or surveying work other than that herein provided for.'

It appears to me that this section would prohibit him from doing any work for the city, but I would like to have an opinion from you on this section of law, thinking that you may have some decisions or opinions rendered by the Attorney General which might give a different interpretation than mine on this section."

I assume that your question as intended is, can a deputy county surveyor lawfully perform work for a city during hours when he is not employed by the county. With reference to this particular question, your attention is directed to a former opinion of this department rendered on May 14, 1927, and reported in Opinions of the Attorney General, 1927, Vol. II, page 807. The third branch of the syllabus of this opinion reads as follows:

"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 corporation or person providing said services are in nowise inconsistent with the duties of his office."

Section 14615 of the General Code of Ohio, to which you refer in your letter, is part of the act to regulate the duties and fix the salaries of county surveyors and deputies in counties having a city of the first class, second grade. House Bill No. 579, passed by the 75th General Assembly, 1902, 95 Laws of Ohio, 921. This act was one of local legislation and applied to Cuyahoga County only. Similar acts were declared unconstitutional by the Supreme Court of Ohio in that they were in conflict with Section 26, Article II of the Constitution of Ohio. See *State of Ohio on relation of Gilbert vs. Yates, Auditor of Pickaway County*, 66 O. S. 546.

Therefore, answering your question specifically, I am of the opinion that a deputy county surveyor may legally accept employment from a city, corporation or other person during hours when he is not required to be on duty for the county, provided said services are in nowise inconsistent with the duties of his office.

Respectfully,

GILBERT BETTMAN,
Attorney General.

146.

SHORTHAND REPORTER—APPOINTMENT PER DIEM BY COURT IN CIVIL AND CRIMINAL CASES—MAXIMUM RATE—APPROPRIATION BY COUNTY COMMISSIONERS NECESSARY.

SYLLABUS:

If the county commissioners have made a proper appropriation for the purpose, the compensation, not exceeding fifteen dollars per day, of a shorthand reporter appointed by the court to take testimony on the trial of a civil or criminal case, should be paid out of the county treasury on the warrant of the county auditor upon approval by the court of the bill of such shorthand reporter for his services.

COLUMBUS, OHIO, March 4, 1929.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

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

“I request your opinion on the following statement of facts:

We have no official court stenographer appointed by the Common Pleas Court for a definite term in Pike County under Section 1546, G. C., We secure the services of a court stenographer from an adjoining county in both civil and criminal cases when said services are requested by either party to the litigation.

The Common Pleas Judge makes the appointment and fixes the salary at fifteen (\$15.00) dollars per diem.

The county auditor refuses to pay the stenographer for the services rendered in the year 1928, except in criminal cases, stating that he is not authorized to draw a warrant on the county treasurer where the stenographer has taken shorthand notes in a civil matter.

Under Section 1548, G. C., I find no distinction between civil and criminal cases.

Please advise whether or not the county auditor should draw a warrant on the county treasurer for services rendered by the stenographer properly appointed by the Common Pleas Court in civil cases.”

The question here presented requires consideration of the sections referred to in your communication and of other sections of the General Code relating to the appointment, services, and compensation of official court reporters.

Section 1546, General Code, provides that when in its opinion the business requires it, the Court of Common Pleas of the county may appoint a stenographic reporter as official shorthand reporter of such court who shall hold the appointment for a term not exceeding three years from the date of such appointment.

Section 1548, General Code, provides that “upon the trial of a case in any of such courts, if either party to the suit, or his attorney, requests the services of a stenographer, the trial judge shall grant the request, or such judge may order a full report of the testimony or other proceedings, in which case such stenographer shall cause accurate shorthand notes of the oral testimony or other oral proceedings to be taken, which notes shall be filed in the office of the official stenographer and carefully preserved.”

Section 1550, General Code, which is more directly applicable to the question under consideration provides as follows:

“Each such shorthand reporter shall receive such compensation as the court making the appointment shall fix, not exceeding three thousand dollars each year in counties where two or more judges of the common pleas court hold court regularly, and in all other counties not more than two thousand dollars. Such compensation shall be in place of all per diem compensation in such courts. Provided, however, that in case such appointment shall be for a term of less than one year, such court may allow a per diem compensation not exceeding the sum of fifteen dollars per day, for each day such shorthand reporter shall be actually engaged in taking testimony or performing other duties under the orders of such court, which allowance shall be in full for all services so rendered.

The auditor of such county shall issue warrants on the treasurer thereof for the payment of such compensation in equal monthly installments, when

the compensation is allowed annually, and when in case of services per diem, for the amount of the bill approved by the court, from the general fund upon the presentation of a certified copy of the journal entry of appointment and compensation of such shorthand reporters."

Under the provisions of the sections of the General Code above quoted, it seems clear that in a case like that here presented the judge of the Court of Common Pleas, if in his opinion the business of the court does not require the appointment of an official court reporter for a term certain not exceeding three years, may appoint a shorthand reporter for the purpose of a particular case or cases to be tried in said court, and fix the per diem compensation of such shorthand reporter for services in the trial of such cases at any amount not to exceed fifteen dollars.

It is likewise clear that the appointment of such shorthand reporter on a per diem compensation basis may be made in any case tried in such court, whether the same be a civil or criminal case.

Under the express provisions of Section 1550, General Code, the compensation of such shorthand reporter so appointed is to be paid out of the general fund of the county upon the warrant of the county auditor when the bill for the per diem compensation of such shorthand reporter is approved by the court.

In connection with your inquiry, I assume that the compensation of the shorthand reporter, whether the same be the official court reporter or otherwise, is subject to appropriation by the county commissioners under the provisions of Sections 5625-29, et seq., General Code; and assuming that in the case here presented a proper and adequate appropriation has been made by the county commissioners for this purpose, I am of the opinion, by way of specific answer to your question, that the county auditor should draw a warrant on the county treasurer for the services rendered by the shorthand reporter appointed by the court on a per diem basis, where the bill for such shorthand reporter's services has been approved by the court, whether such services were rendered in civil or criminal cases, or both.

In this connection, it is to be noted that under the provisions of Section 1552, General Code, the folio charge of such shorthand reporter for making a transcript in a civil case is not to be paid out of the county treasury, unless such transcript is ordered by the court; in which case the cost of making such transcript is to be taxed as costs in the case, collected as other costs and paid by the clerk into the treasury of the county to the credit of the general fund. It should be, likewise, noted that under the provisions of Section 1549, General Code, a per diem charge of four dollars for the services of a shorthand reporter appointed by the court in any case should be taxed as a part of the costs in the case; and, when collected, the same should be paid into the treasury of the county to the credit of the general fund.

Respectfully,

GILBERT BETTMAN,
Attorney General.

147.

APPROVAL, LEASE TO MIAMI AND ERIE CANAL LANDS.

COLUMBUS, OHIO, March 4, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, submitting for my examination and approval two certain canal land leases, in triplicate, covering parcels of Miami and Erie canal lands therein respectively described.