

I am, therefore, of the opinion that the bonds in question are not valid and binding obligations of Moulton township and advise the industrial commission not to purchase the same.

Respectfully,

JOHN G. PRICE,  
Attorney-General.

1327.

**MUNICIPAL CORPORATION—CITY ENGINEER EMPLOYED ON PER DIEM BASIS—WHEN SURVEYS FOR PROPOSED WATERWORKS EXTENSION CAN BE PAID FROM APPROPRIATION FOR CITY ENGINEER.**

*A city having employed its engineer on a per diem basis, and the city council in the semi annual appropriation ordinance having made sufficient appropriation in the public service fund to cover the compensation of the engineer on the basis that he be employed for every day in the six months' period, the service director of such city may draw upon such appropriation to pay the expense of surveys for proposed waterworks extension, to the extent that appropriations from waterworks revenues are insufficient to pay such expense.*

COLUMBUS, OHIO, June 9, 1920.

*The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN—You have recently submitted for opinion the following:

“Statement of Facts.

The city of Bellaire employs an engineer not on a fixed salary but on a per diem basis. The state fire marshal of Ohio has issued orders for the city to supply water to outlying districts of the municipality. The city is desirous of having preliminary survey of the engineer to ascertain the probable cost or expense of the water lines to such outlying districts and to make plans and surveys for such purposes. The above mentioned per diem arrangement as to the engineer's salary is provided for in the semi-annual appropriation ordinance by an item sufficient to cover the salary of the engineer on basis that he be employed every day during the six months' period. The service director is desirous of carrying out the wishes of council as to the survey mentioned. The semi-annual appropriation of waterworks funds contains an item for 'Administration' but the amount appropriated under said item is not sufficient to withstand the expense of the surveys above mentioned.

“*Question:* May such compensation of the engineer for the time spent on the survey described be legally charged to the general appropriation for engineering in the public service fund or should it be charged by the director of public service to the waterworks fund?”

In connection with your statement that

“the service director is desirous of carrying out the wishes of council as to the survey mentioned”

it has been ascertained that the only action taken by council is as shown by the minutes of its meeting of April 23, 1920·

“On motion by J., seconded by D. that the director of service instruct the engineer to make a survey for water lines on (certain named streets): carried;”

that in pursuance of said action the director of service instructed the engineer to make the surveys; and that “neither at the time the motion was made, nor subsequently, did council make any appropriation for the proper survey.”

Provisions as to the conduct and control of waterworks in cities are found in sections 3955 to 3981 G. C. In said series, section 3956 makes general provision that the director of public service shall manage, conduct and control the waterworks; and section 3959 provides, among other things, that surplus revenues *may be applied* to the repairs, enlargement or extension of the works or of the reservoirs. Section 3960 G. C. reads·

“Money collected for water works purposes shall be deposited weekly with the treasurer of the corporation. Money so deposited shall be kept as a separate and distinct fund. *When appropriated by council*, it shall be subject to the order of the director of public service. Such director shall sign all orders drawn on the treasurer of the corporation against such fund.”

Section 3961 reads·

“*Subject to the provisions of this title*, the director of public service may make contracts for the building of machinery, water works buildings, reservoirs and the enlargement and repair thereof, the manufacture and laying down of pipe, the furnishing and supplying with connections all necessary fire hydrants for fire department purposes, keeping them in repair, and for all other purposes necessary to the full and efficient management and construction of water works.”

Notwithstanding the broad administrative powers conferred on the director of public service by the statutes in question, it is clear that the two sections last quoted are in effect a mandate to the director to keep his expenditures within appropriations previously made by council,—a proposition which seems to be fully recognized in the case stated by you, inasmuch as the dilemma in which the director finds himself is due to the fact that the semi-annual appropriation from water works revenues is not large enough to provide for the surveys in question in addition to other items which must be charged to the appropriation. Undoubtedly, such appropriation, if sufficient in amount, would properly be chargeable with the cost of the contemplated surveys.

But the question remains whether the director of service is confined to the appropriation just referred to. May he, on finding such appropriation insufficient, resort to the item in the semi-annual appropriation ordinance providing funds for payment for the services of the engineer,—the appropriation for this latter item, as shown by your statement, being sufficient to cover the services of the engineer for the entire semi-annual appropriation period?

No statute has been found which the director of service would be violating if he orders payment made out of the appropriation for engineering. Council evidently believed that the city engineer would be occupied in engineering work for the whole six months' period. The director of public service has charge not only of the waterworks (sections 3955 et seq., *supra*, and section 4326), but is also to “manage and supervise all public works and undertakings of the city, except as otherwise provided

by law," (section 4324), and if in the exercise of a sound discretion he concludes that a survey for a proposed waterworks extension should have the attention of the engineer in preference to other proposed or current improvements, no reason is perceived for his not proceeding accordingly, when he has at hand a fund which was expressly appropriated for engineering services. The statement just made is certainly not open to the objection that council has indicated an intent that the engineering appropriation be not used for waterworks purposes, in that it did not exercise its power to include in the waterworks section of the semi-annual appropriation an item to cover cost of the proposed surveys, for on the one hand the appropriation for engineering appears to have been a general one without express restriction against use for particular purposes and hence may be devoted by the director to such municipal engineering necessities as he may in his discretion find advisable, and on the other hand, council in adopting said motion of April 23, has at least indicated a belief that funds had been appropriated for the making of the surveys. However desirable it may be from the standpoint of policy that council should have made provision from waterworks revenues for the expense of making the surveys in question, it cannot be said upon the whole, in the absence of a restrictive statute or ordinance, that the director will be guilty of an abuse of discretion in drawing upon the engineering appropriation for the payment of such expense, to the extent that the appropriation from waterworks revenues is insufficient to care for such expense.

You are therefore advised in specific answer to your question that compensation of the engineer for the time spent on the survey described may be legally charged to the general appropriation for engineering in the public service fund, to the extent that the appropriation from waterworks revenues is insufficient to provide for such compensation.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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1328.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN ASHLAND AND WYANDOT COUNTIES.

COLUMBUS, OHIO, July 10, 1920.

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

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1329.

APPROVAL, BONDS OF BROOKVILLE CONSOLIDATED SCHOOL DISTRICT MONTGOMERY COUNTY, OHIO, IN AMOUNT OF \$120,000.

COLUMBUS, OHIO, June 11, 1920.

*Industrial Commission of Ohio, Columbus, Ohio.*