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1. ENGINEER, COUNTY — TWO-THIRDS COST OF OPERATION, SALARIES, MAINTENANCE, REQUIRED SERVICES, INCLUDING IMPROVEMENTS COUNTY DITCH, PAID OUT OF COUNTY'S SHARE, MOTOR VEHICLE LICENSE AND MOTOR VEHICLE FUEL TAXES — SECTION 2782-2 GENERAL CODE.
2. ENGINEER HAS NO AUTHORITY TO COLLECT FEES, COUNTY DITCH IMPROVEMENT FROM GENERAL DITCH IMPROVEMENT FUND — COUNTY COMMISSIONERS MAY TRANSFER CERTAIN FUNDS — SECTIONS 5625-13a TO 5625-13g, GENERAL CODE.

SYLLABUS:

1. Section 2782-2, General Code, requires two-thirds of the cost of operation of the office of the county engineer, including salaries of all employes and the cost of maintenance thereof, to be paid out of the county's distributive share of the motor vehicle license and the motor vehicle fuel taxes. Such cost of operation embraces the cost of all services which the county engineer is required by law to perform, including the services of his office with respect to county ditch improvements.

2. The county engineer has no authority to collect fees from the general ditch improvement fund for his services in connection with county ditch improvements, but the county commissioners may transfer funds from the general ditch improvement fund to the general fund of the county by complying with the requirements of Sections 5625-13a to 5625-13g, General Code.

Columbus, Ohio, January 16, 1942.

Hon. William L. Coleman, Prosecuting Attorney,
Marysville, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

"Our County Engineer, the Honorable Claude Skidmore, has requested me for an interpretation of No. 2782-2 of the General Code of Ohio, which question I am referring to you for an opinion.

As you will note the said section of the Code provides that two thirds of all the County Engineers' expenses must be paid to the general fund of said County from the money raised under the said section of the Code 2782-2. We are at a loss to know as to whether the County General Fund must be reimbursed to the extent of two thirds for all work done by the engineer's

office including the work done on *county ditch work*. You will also note that abutting property owners are assessed generally for the work done on such county ditches and the question arises as to whether reimbursement must also be made for this particular phase of the engineer's services."

County ditches are established and maintained under authority of the provisions found in Chapters 1, 2, 3 and 8 of Title III, being Sections 6442 to 6595 and 6691 to 6726-4 of the General Code. The improvements are generally made under contract in accordance with plans and specifications prepared by the county engineer who is also supervisor of the work. Improvement costs are paid from the general ditch improvement fund, established under authority of Section 6492, General Code, which provides:

"The commissioners of each county shall provide and establish a fund, to be known as the general ditch improvement fund, which shall be used as a sinking fund for all bonds issued under the provisions of this chapter. Said fund shall consist of all funds in any ditch fund at the time this act takes effect, that are not then specifically appropriated, of any taxes then or thereafter levied and collected for ditch and drainage purposes under county levies, not by law otherwise disposed of, the proceeds of all bonds issued and sold under this chapter, the collections from all special assessments for benefits to property, as provided in this chapter, and such other funds as by law are or may be provided to be paid therein."

Payments from the fund are authorized by Section 6493, General Code, which reads as follows:

"From the general ditch improvement fund, except as otherwise provided by law, all costs and expenses of improvements under this chapter shall be paid, including contract prices of construction and the costs of locating the improvement. No warrants shall be drawn, to be paid from such fund, unless it contains a sufficient amount not otherwise specifically appropriated to pay the same.

The letting and approving of any contract for an improvement shall be deemed a specific appropriation of the amount of such obligation, and such amount shall be set apart for the purpose of such payment, and contingently charged against said fund. If, at any time, said fund contains the proceeds of bonds issued and sold under this chapter, then said fund shall not be depleted below the obligations incurred by such bond issue or issues, unless assessments or levies have been made or ordered made, and in sufficient amount to redeem the same as they fall due. If at any time obligations legally incurred exceed the amount of said improvement fund, an amount of the general revenue funds in the county treasury, unless otherwise appropriated, equal to the deficiency, may by resolution of the

board of commissioners, be transferred to the general ditch improvement fund.”

Section 6454, General Code, details the various duties of the county engineer with respect to proposed improvements and, among other things, provides:

“ * * * He shall make an estimate of the cost of inspecting the work as it progresses, and shall with the assistance of the prosecuting attorney, prepare forms for contracts with bidders, and forms of bonds to secure the performance of such contracts. He shall make an itemized bill of the costs and expenses incurred in the proper discharge of his duties aforesaid, and he shall file said maps, profiles, schedules, and reports with the auditor, upon completing the same.”

Section 6691, General Code, permits the county commissioners to delegate to the county engineer the duty of keeping ditches, drains and water courses clean and in repair. These duties may either be performed by the county engineer or he may employ a ditch supervisor for the purpose. If a ditch supervisor be employed, provision for his compensation and compensation of an assistant is made in Section 6692, General Code, as follows:

“Such ditch supervisor shall receive such compensation as the county commissioners may determine, not to exceed three dollars per day for the time actually employed on ditch work, which compensation shall be paid from the general ditch improvement fund upon presentation of an itemized account certified upon oath by the ditch supervisor, and allowed by the commissioners. When actually engaged in measuring a ditch, drain or watercourse, the supervisor shall be allowed one assistant, who shall receive compensation, as the commissioners may determine, not to exceed two dollars and a half per day for the time actually employed; and shall be paid from the general ditch improvement fund upon the certificate of the ditch supervisor and the allowance of such claim by the commissioners.”

I assume, however, that a county ditch supervisor and his assistant are not involved in the questions you have submitted.

The authority for county officials, including the county engineer, to employ deputies and assistants is found in Section 2981, General Code, which reads in part:

“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 semi-monthly from the county treasury, upon the warrant of the county auditor. * * *

Former attorneys general have held, as shown in Opinions of the Attorney General for 1932, No. 4141, Volume I, page 352, and Opinions of the Attorney General for 1935, No. 4150, Volume I, page 424, that the words "county treasury," as used in the above section, refer to the general fund of the county. Other expenses of operating the office of the county engineer are also paid from the general fund of the county as provided in Section 2786, General Code, which is as follows:

"The county surveyor shall keep his office at the county seat in such room or rooms as are provided by the county commissioners, which shall be furnished, with all necessary cases and other suitable articles, at the expense of the county. Such office shall also be furnished with all tools, instruments, books, blanks and stationery necessary for the proper discharge of the official duties of the county surveyor. The cost and expense of such equipment shall be allowed and paid from the general fund of the county upon the approval of the county commissioners. The county surveyor and each assistant and deputy shall be allowed his reasonable and necessary expenses incurred in the performance of his official duties."

Former attorneys general have considered the question of apportioning the expenses of operating the county engineer's office with a view of charging specific funds for a proportionate share of such expenses and have consistently held that such procedure is unauthorized. To this effect the syllabus of Opinion No. 4141, reported in Opinions of the Attorney General for 1932, Volume I, page 352, reads:

"The expense of the county surveyor and his office, in connection with the cost of the construction of a road improvement, are to be paid from county general funds and such cost cannot be proportioned and paid from the proceeds of a special road tax levy authorized by Section 5625-15 et seq., of the General Code."

The same conclusion was reached in Opinions of the Attorney General for 1935, No. 4150, Volume I, page 424, the syllabus of which reads:

"The salary of a payroll clerk in the office of a county surveyor must be paid from the general fund of the county and there is no authority in law for the payment of any portion of such salary from the county road and bridge fund."

A similar conclusion was reached in Opinions of the Attorney General

for 1937, No. 56, Volume I, page 96, of which the first branch of the syllabus reads:

“Where a County Engineer and an annually employed Deputy Engineer perform services on a county ditch improvement project, no per diem fees for these services can be included in the costs to be assessed for said ditch improvement.”

Section 2983, General Code, referring to certain county officials, including the county engineer, requires such officials to pay into the county treasury to the credit of the general fund all fees, costs, penalties, percentages and perquisites of whatever kind collected by his office for official services “provided that none of such officers shall collect any fees from the county.” I must therefore conclude that, with the exception of the compensation of ditch supervisors and assistants, the county engineer is without authority to collect from the general ditch improvement fund any of the expenses of his office for services performed in connection with ditch supervision and that all salaries and other expenses of his office must be paid from the general fund of the county.

While the cost of operating the county engineer’s office, including salaries of employes, is paid from the general fund, the legislature in 1939 passed Section 2782-2, General Code, which provides that two-thirds of such cost is to be charged to the county share of the motor vehicle license and fuel taxes.

Section 2782-2, General Code, reads:

“Two-thirds of the cost of operation of the office of county engineer, including the salaries of all of the employes thereof and the cost of the maintenance thereof as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county’s share of the fund derived from the receipts from motor vehicle licenses as distributed by section 6309-2 of the General Code, and from the county’s share of the fund derived from the motor vehicle fuel tax as distributed by section 5541-8 of the General Code.”

The statute appears to be unambiguous and free from doubt. The county engineer has numerous duties to perform. His duties include not only work on public roads and highways but, among other things, county ditch improvements, all of which duties contribute to the cost of operating his office.

In my Opinion No. 1120, rendered August 31, 1939, and now reported in Opinions of the Attorney General for 1939, Volume II, page

1632, I considered questions somewhat similar to those submitted by you and held, as shown in the second and third branches of the syllabus:

"2. The salaries of assistant engineers, engineering clerks, instrumentmen, rodmen, etc., employed by the county engineer, are payable from the county general fund, whether they are assigned to regular county duties or are engaged in engineering work in connection with a WPA highway improvement.

3. By reason of the provisions of Section 2782-2, General Code, when it becomes effective, two-thirds of the amount appropriated by the board of county commissioners for the operation of the county highway engineer's office is payable from funds allotted to the county from the proceeds of the motor vehicle license tax and the motor vehicle fuel tax and the remainder from the general fund of the county."

The county engineer's office operating allowance from the motor vehicle license and fuel tax distributions being general and without restriction, it must be construed as applying to all expenses of his office, including such expenses as might be allocated to ditch improvement work.

Coming now to a consideration of the right, if any, to transfer funds from the general ditch improvement fund to the general fund of the county to the extent that services have been performed on ditch improvement work by the county engineer, I find that a former attorney general, in considering this question after quoting Section 5625-13a, General Code, stated, as shown in Opinions of the Attorney General for 1935, No. 4150, Volume I, page 424:

"From the foregoing section, it would seem that the taxing authority of the county (the county commissioners under section 5625-1c, General Code) might have authority to proceed to reimburse the general fund for the proportion of the salary of the payroll clerk earned during the time spent in connection with the work of making out payrolls for employes paid from the county road and bridge fund by transferring moneys from the special fund, the county road and bridge fund, to the general fund, providing such county commissioners followed the procedure set out in sections 5625-13b, et seq., General Code."

Section 5625-13, General Code, makes provision for the transfer of certain detailed funds, none of which appear to include the general ditch improvement fund. Such transferring power is supplemented by Section 5625-13a, General Code, as follows:

"In addition to the transfers authorized in section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the pro-

ceeds or balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes.”

This section appears to be broad enough to warrant a transfer from the ditch fund to the general fund where the funds sought to be transferred are not balances of loans, bond issues or special levies for the payment thereof, since no excise taxes or license fees are included in the ditch fund. The method of making such transfer is set forth in Sections 5625-13b to 5625-13g, General Code, and requires the approval of the Tax Commissioner and the Court of Common Pleas.

In specific answer to your questions it is my opinion that:

1. Section 2782-2, General Code, requires two-thirds of the cost of operation of the office of the county engineer, including salaries of all employes and the cost of maintenance thereof, to be paid out of the county's distributive share of the motor vehicle license and the motor vehicle fuel taxes. Such cost of operation embraces the cost of all services which the county engineer is required by law to perform, including the services of his office with respect to county ditch improvements.

2. The county engineer has no authority to collect fees from the general ditch improvement fund for his services in connection with county ditch improvements, but the county commissioners may transfer funds from the general ditch improvement fund to the general fund of the county by complying with the requirements of Sections 5625-13a to 5625-13g, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.