

1921.

INSPECTORS—COUNTY ROAD IMPROVEMENTS—HIRING AND FIXING OF COMPENSATION OF SUCH INSPECTORS WITHIN DISCRETION OF SURVEYOR—CONDITION NOTED.

*SYLLABUS:*

*The authority to employ inspectors on county road improvements and fix the compensation therefor lies wholly in the discretion of the county surveyor, subject to an appropriation being made for such purpose by the county commissioners from the proper fund or funds.*

COLUMBUS, OHIO, May 29, 1930.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Does the County Surveyor have authority to employ men as inspectors of County Road Improvement without the consent of the County Commissioners.

If the County Surveyor has or has not this authority but such men are appointed who fixes the compensation of such inspectors, that is, does the surveyor determine the amount to be paid or is that left with the County Commissioners.”

Section 2981, General Code, which relates to county officers generally, including surveyors, was amended by the 87th General Assembly, and provides in part as follows:

“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. \* \* \*”

Section 2987, General Code, also provides:

“The deputies, assistants, clerks, bookkeepers, and other employes of such offices shall be paid from the appropriate county fund or funds, upon the warrant of the county auditor.”

In an opinion of my predecessor found in Opinions of the Attorney General for the year 1927 at page 1904, a comprehensive discussion was made as to the authority of the county surveyor to employ an inspector. The then Attorney General pointed out that nowhere in the General Code was there to be found an express provision to employ inspectors. However, after mentioning the sections above quoted and Section 2793, General Code, which provides, among other things, that the county surveyor shall be responsible for the inspection of public improvements made under the authority of the board of county commissioners, and other sections, he concluded that the county surveyor, by reason of the foregoing sections, had authority to appoint inspectors. Said opinion contains a discussion as to what funds are available for the purpose of paying said inspectors. Without quoting at length from the discussion with respect to this subject it may be stated that it was held, as disclosed by the syllabus,

“Inspectors employed by a county surveyor, for the purpose of inspecting roads or bridges constructed under authority of the county commissioners, may be compensated for their services as such inspectors from funds appro-

priated for that purpose by the county commissioners from the road or bridge fund of the county."

However, an examination of the opinion will disclose that the general fund is also available for the payment of such inspectors.

In connection with your inquiry, it is believed proper to refer to Section 5625-29, General Code, which requires the taxing authority of each subdivision to pass an annual appropriation measure on or about the first day of each year and supplemental appropriation measures during the year as it finds necessary, based on the revised tax budget and the official certificates of estimated resources. In other words, it will be seen that the county commissioners must necessarily appropriate funds which are available for the purpose of paying the deputies, assistants, and other employes of the county surveyor.

In view of the opinion of the Attorney General hereinbefore referred to, in making such appropriations the commissioners may take into consideration funds other than the general county fund in so far as inspectors are concerned. In other words, said opinion concluded that either the general fund or the road and bridge fund of the county were proper funds out of which payment of such inspectors should be made. It is stated on page 1908 that county officers could not be said to have abused their discretion if they should determine that an inspector should be paid from the same fund from which the cost of the improvement itself was being paid.

It will therefore be seen that the sole power of the appointment of inspectors and the fixing of their compensation lies with the county surveyor. It further follows, however, that such employment must be made within the limits of the appropriation available for such purposes as made by the county commissioners. In other words, the county commissioners must appropriate for such purposes generally but are not authorized to specify the salary of any particular employe.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that the authority to employ inspectors on county road improvements and fix the compensation therefor lies wholly in the discretion of the county surveyor, subject to an appropriation being made for such purpose by the county commissioners from the proper fund or funds.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1922.

APPROVAL, BONDS OF VILLAGE OF SEAMAN, ADAMS COUNTY—\$4,000.00.

COLUMBUS, OHIO, May 29, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*