

fireman entitled to pay for the remainder of the period covered by the pay roll.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

56.

COUNTY ENGINEER — DEPUTY — ANNUALLY EMPLOYED,
SERVICES ON COUNTY DITCH IMPROVEMENT—NOT
ENTITLED TO A PER DEIM FEE TO BE INCLUDED IN
COST OF IMPROVEMENT—SPECIALLY EMPLOYED DEP-
UTY ENGINEER ENTITLED TO PER DIEM FEE.

SYLLABUS:

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

2. *A per diem fee representing the actual cost of a Deputy Engineer specially employed for county ditch improvement by the County Engineer, may properly be made a part of the costs to be assessed.*

COLUMBUS, OHIO, January 27, 1937.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of January 11th, which reads as follows:

“The County Engineer has requested an opinion from you regarding the assessment of costs on county ditches. He would specifically like to know whether he may assess as part of the costs of the ditch (a) a per diem fee for the County Engineer himself under section 2822 of the General Code; (b) a per diem fee for the annually employed Deputy County Engineer; and (c) a per diem fee for a Deputy County Engineer specially employed for the project.

“The Code sections involved are 6454 and 2822 of the General Code.

“Will you kindly give us your opinion on this?”

Section 2822 of the General Code which is specifically referred to by you, reads as follows:

*"Fees of County Surveyors:—*When employed by the day, the Surveyor shall receive five dollars for each day and his necessary actual expenses. When not so employed, he shall be entitled to charge and receive the following fees: for each rod run, not exceeding one mile, three-fourth of one cent, and for each rod over one mile, one-half of one cent, for making out or recording a plat not exceeding six lines, seventy-five cents, and for each line in addition, five cents, for each one hundred words or figures therein, six cents, for calculating the contents of a tract not exceeding four sides, six cents; and for each additional line, ten cents, for mileage going and returning, five cents per mile, and for all other services, the same fees as those of other officers for like services. Chain carriers and markers are entitled, each, to two dollars."

By virtue of the amendment of sections 2781-1, General Code, the title of "County Surveyor", was changed to "County Engineer" and according to the provisions of the said amendment, wherever the term "County Surveyor" appears in the General Code, it is to be read as "County Engineer". This being true, section 2822, General Code, has been made to apply to County Engineers. However, the effect of General Code, sections 2822 and 6454 (not cited herein because of its length) have been modified by a later statute 7181, General Code, which must be taken into consideration. In an opinion of the Attorney General for 1917, Volume II, page 1196, which was cited in the opinions of the Attorney General, 1932, Volume II, page 759. These statutes were discussed at length and the following statement regarding the law appears in both opinions:

"After the enactment of section 7181, General Code, in its present form, there was no longer any reason for the existence of section 2822, General Code, so far as the county is concerned, but in order to preserve its schedule of fees for charges to be made by the County Surveyor to private persons or political subdivisions other than the county, the legislature provided in section 7181, General Code, that:

'When the County Surveyor performs service in connection with ditches or drainage works under the provisions of sections 6442 to 6822 inclusive, of the General Code of Ohio, he shall charge and collect the per diem allowances or other fees

therein provided for and shall pay all such allowances and fees monthly into the county treasury to the credit of the general county fund. The County Surveyor shall do likewise when he performs services under the provisions of 2807-2814 inclusive of the General Code of Ohio.'”

These services in question which are to be rendered by the County Engineer and the annually employed Deputy Engineer are services on a county ditch improvement project and as such do not come within special circumstances to which section 2822, General Code, is now understood to apply.

Also to be considered is the case of *Longworth vs. Cincinnati*, 34 O. S. 101, in which the following statement of law appears :

“Where the surveying and engineering of such improvement were performed by the Chief Engineer of the city and his assistants, who were officers appointed for a definite period, at a fixed salary which the law required to be paid out of the General fund of the city, the reasonable cost to the city of such surveying and engineering, can not be ascertained and assessed upon the abutting property, as a necessary expenditure for the improvement.”

This rule was cited, ably interpreted, and with other opinions of the Attorney General made applicable to facts much like these of the present case, in an opinion of the Attorney General for 1936, No. 5743. Here again was offered the rule that an officer and his regular salaried deputies appointed under statutes which made express provisions for their salaries from the General fund, (in the case of County Engineer, section 2891, General Code) could not be given compensation in whole or part from any special fund established through a special levy.

The facts as stated here come well within this rule, and section 7181 General Code, creates no special circumstances through which charges can be authorized under section 2822, General Code.

It is therefore my opinion that no per diem fee for the County Engineer or the annually employed Deputy under sections 2822 and 6454, General Code, respectively, can be included in the costs to be assessed for county ditch improvement.

However, in the case of a Deputy Engineer, specially employed by the County Engineer for the improvement in question, a different set of facts is presented. Such a Deputy is a special employee, rendering special services required only for the project in question. Here again

the law of *Longworth vs. Cincinnati supra*, applies. The third syllabus of that case which deals with a special employee is as follows:

“3. If a superintendent of such improvement is necessary, and one is employed by the city for that particular improvement, the amount paid by the city, for his services, may properly be included in the assessment.”

This rule was further cited and applied to the case of an employee specially employed by a County Surveyor in an opinion of the Attorney General for 1927, Volume III, page 194.

The rule of these authorities clearly distinguishes the special employee from the regular employee and is clearly applicable to the present facts.

It is therefore my opinion that a per diem fee representing the actual cost of a Deputy Engineer, specially employed for county ditch improvement by the County Surveyor, may properly be made a part of the costs to be assessed.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

57.

APPROVAL—BONDS OF SOUTH AMHERST VILLAGE
SCHOOL DISTRICT, LORAIN COUNTY, OHIO, \$14,400.00.

COLUMBUS, OHIO, January 29, 1937.

Industrial Commission of Ohio, Columbus, Ohio.

58.

APPROVAL—CERTIFICATE OF AMENDMENT TO ARTICLES
OF OHIO STATE LIFE INSURANCE COMPANY.

COLUMBUS, OHIO, January 29, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I have examined the certificate of amendment to the articles of The Ohio State Life Insurance Company.