

Specifically answering your question, it is my opinion that if all of the owners of the property abutting upon a street which is being improved by county commissioners under authority of Sections 6973, et seq. of the General Code, sign a waiver of the notice required to be given by Section 6977, General Code, it is not necessary to publish the notice provided for in said section.

Respectfully,
EDWARD C. TURNER,
Attorney General.

936.

OHIO NATIONAL GUARD—OFFICER ENTITLED TO COMPENSATION WHILE ON ACTIVE DUTY EVEN THOUGH HOLDING OTHER POSITION IN ORGANIZATION WHICH RECEIVES CONTRIBUTIONS FROM THE STATE OF OHIO.

SYLLABUS:

Officers of the Ohio National Guard are entitled to compensation while on active duty even though they may hold positions in organizations which receive contributions from the State of Ohio, and their compensation for duties incident to such positions is paid from funds appropriated by the legislature for the use of such organizations.

COLUMBUS, OHIO, August 30, 1927.

HON. WILBUR E. BAKER, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication reading as follows:

"The Adjutant General's Department has presented for our approval a voucher payable to Major J. E. for \$157.09. Of this amount \$147.10 represents ten days' personal service from August 3rd to August 12th, at the rate of \$14.71 per diem. During this period Major E. was at Athens, Ohio, representing the Adjutant General's office in the present mine investigation.

Major E. during the period of August 1st to 15th, drew payment from the state for services as Department Adjutant of the Spanish-American War Veterans in the amount of \$75.00; and for services as Secretary-Treasurer of the 37th Division A. E. F. History in the amount of \$100.00, both offices being in the Stoneman Building, Columbus, Ohio.

The above amounts are payable from appropriations in H. B. 502 as follows:

F-8 Contingencies—Ohio National Guard.

A-1 Salaries—Department Adjutant Headquarters Spanish-American War Veterans.

F-9 General Plant—37th Division A. E. F. History.

Your opinion is requested as to whether Major E. is entitled to receive payment for services from the Spanish-American War Veterans and the 37th Division A. E. F. History organization during the period he was on duty at Athens.

Your opinion is also requested as to whether Major E. is entitled to receive payment for services while on active duty in the Ohio National Guard stationed at Athens, when he was paid for performing duties in Columbus for the Spanish-American War Veterans, and the 37th Division A. E. F. History."

I am advised that Major E. is a regularly appointed officer of the Ohio National Guard with the rank of major. As such he is subject to call for the performance of such military duties as are incident to his position. For the performance of these duties, when a proper appropriation has been made, he is entitled to the same pay and allowance per day for each day's services performed as is provided for officers of like grade in the armies of the United States. See Sections 5226, 5228 and 5231 of the General Code.

In the general appropriation act passed by the 87th General Assembly of Ohio, appropriation is made for "Headquarters, Spanish-American War Veterans" in the sum of \$1,500.00 for the period from July 1, 1927, to December 31, 1927, denominated in said act as being for "Personal Service, A-1 Salaries." This item is separately classified as being for "Department Adjutant \$900.00" and "Assistant Department Adjutant \$600.00." An appropriation is also made for the same period for the "37th Division A. E. F. History" for "Maintenance, F-9 General Plant, \$20,000." In the latter case no specific classification is provided for which the appropriation is to be disbursed, other than "General Plant," the detailed disbursement of this fund being left to the person in charge of the particular organization for which the appropriation is made.

As neither the Spanish-American War Veterans nor the 37th Division A. E. F. History is a department, commission, bureau, institution or office of the state government, or under state control, the monies appropriated and paid to these organizations are in the nature of contributions, although not specifically so labeled as are other appropriations for similar activities, such, for instance, as the appropriations for the American Legion and the Daughters of the American Revolution. The only practical difference between these appropriations is that in the payment of the appropriations specifically denominated as contributions, payment is made to the particular organization, for which the appropriation is made, in a lump sum without any regard to its use thereafter, while appropriations such as those for salaries under the heading "Headquarters, Spanish-American War Veterans" and "Maintenance, 37th Division A. E. F. History", not denoted in the appropriation act as contributions, are paid out on vouchers showing detailed expenditures and certified to by the persons authorized by the particular organizations to make expenditures therefor.

The persons conducting these separate organizations are selected and their compensation fixed in accordance with the regulations governing the particular organization. They are not appointed by the State of Ohio, nor are they discharged by the State or any of its officers. They handle no State property, nor do they render any services to the State. They are in no sense state officers or employees. Major E., while acting as Secretary and Treasurer of the 37th Division A. E. F. History and Department Adjutant of the Spanish-American War Veterans, acts in a private capacity, and if these organizations see fit to compensate him while he is in the performance of duties incident to his position as an officer in the National Guard, no one can question their right to do so. His compensation for duties performed incident to his position with the National Guard is in no way dependent on his private means or on salaries or compensation which he may receive for acting in a private capacity, but is due him as a matter of right.

Specifically answering your question, therefore, I am of the opinion that Major E. is entitled to payment for his services while representing the Adjutant General's Office in the mine investigation at Athens, Ohio, even though he may have drawn compensation for services rendered during the same period as Secretary-Treasurer of the 37th Division A. E. F. History and as Department Adjutant for the Spanish-American War Veterans.

Respectfully,
EDWARD C. TURNER,
Attorney General.

937.

APPROVAL, BONDS OF THE VILLAGE OF BROOKLYN HEIGHTS, CUYA-HOGA COUNTY, OHIO, \$30,315.00.

COLUMBUS, OHIO, August 30, 1927.

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

938.

APPROVAL, BONDS OF THE VILLAGE OF PARMA, CUYAHOGA, COUNTY, OHIO, \$485,108.24.

COLUMBUS, OHIO, August 30, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

939.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE JOS. L. SKELDON ENGR. CO., TOLEDO, OHIO, FOR CONSTRUCTION OF TWO STEAM DRIVEN AIR COMPRESSORS FOR THE BOYS' INDUSTRIAL SCHOOL, LANCASTER, OHIO, AT AN EXPENDITURE OF \$4,132.00—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

COLUMBUS, OHIO, August 31, 1927.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State