

4885.

COUNTY ENGINEER—REQUIREMENTS FOR ELIGIBILITY
AS CANDIDATE OR APPOINTMENT TO OFFICE OF
COUNTY ENGINEER.

SYLLABUS:

Under the provisions of Section 2783, General Code, as amended by House Bill No. 97, enacted at the regular session of the 91st General Assembly, (116 O. L. 283);

1. *In order to be eligible as a candidate or to be elected to the office of county engineer, it is necessary for a person to be both a registered professional engineer and a registered surveyor.*

2. *It is not contemplated under the provisions of said section, that two persons, one being only a registered professional engineer and the other being only a registered surveyor, may be candidates for or elected to or appointed to the office of county engineer.*

COLUMBUS, OHIO, November 12, 1935.

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

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

“Re: House Bill No. 97 to amend Sections 2783 and supplement section 2782 by the enactment of Section 2782-1.

May I direct your attention to the above Act which was passed May 15, 1935 and approved May 29, 1935, relative to the title and eligibility for office of county surveyors; and especially do I desire to call your attention to the last sentence of Section 2783 of said Bill, reading as follows:

‘In all counties no person shall be eligible as a candidate for the office of county engineer or be elected or appointed thereto, except a registered professional engineer and registered surveyor licensed to practice in the State of Ohio.’

The following questions arise:

1. In order to be eligible as a candidate for the office of county engineer, it is necessary for such person to be a registered professional engineer and a registered surveyor?

2. Is a person, who meets all other qualifications, including a

registered surveyor's license, but does not have a registered professional engineer's license, eligible as a candidate for the office of county engineer?

3. Is said sentence construed to contemplate one person holding both an engineer's and surveyor's license, or are two persons contemplated, one having a surveyor's license and one having an engineer's license, thereby permitting one or two persons to be eligible? (The answer to this question will depend, in a major portion, on the construction placed upon the first word 'except', and the sixth word, 'and' of the last clause).

Will you kindly give me the information desired? In reading the last sentence, I would like to know if a registered professional engineer and a registered surveyor's license are both required before a person shall be eligible as a candidate for the office of county engineer."

Sections 2782 and 2783, General Code, as they formerly existed were as follows:

Sec. 2782.

"There shall be elected in each county, at the regular election in 1924, a county surveyor, who shall assume office on the first Monday of September next after his election and who shall hold said office for a period of three years and four months or until the first Monday of January, 1929. There shall be elected in each county, at the regular election in 1928, and quadrennially thereafter, a county surveyor who shall assume office on the first Monday in January next after his election and so shall hold said office for a period of four years."

Sec. 2783.

"No person holding the office of clerk of court, sheriff, county treasurer or county recorder, shall be eligible to the office of county surveyor."

At the regular session of the 91st General Assembly, Section 2783 was amended and Section 2782 was supplemented by the enactment of supplemental Section 2782-1. These sections read as follows:

Sec. 2782-1.

"The title of county surveyor shall be changed to that of county engineer. Wherever the words 'county surveyor' are found in any section of the General Code, not herein amended or repealed,

they shall, after the taking effect of this act, be read, 'county engineer.' ”

Sec. 2783.

“No person holding the office of clerk of court, sheriff, county treasurer or county recorder, shall be eligible to the office of county engineer. In all counties no person shall be eligible as a candidate for the office of county engineer or be elected or appointed thereto, except a registered professional engineer and registered surveyor licensed to practice in the state of Ohio.”

It is a well settled rule of statutory construction that if the sense in which words are intended to be used can be clearly ascertained from the parts and provisions of the statute, the statute itself furnishes the best means of exposition and the intention thus indicated will prevail without resort to other means of aiding construction. Legislative bodies must be understood to have meant what they have plainly expressed. It is no part of the judicial function to attempt to interpret that which needs no interpretation. *Sutherland Statutory Construction*, 2nd Ed., Vol. II, pages 698 to 706.

This principle is recognized and approved in Ohio case law as disclosed by the following language in *Stanton vs. Realty, Company*, 117 O. S. 345, at pages 349 and 350:

“It is the general rule of interpretation of statutes that the intention of the legislature must be determined from the language employed, and, where the meaning is clear, the courts have no right to insert words not used, or to omit words used, in order to arrive at a supposed legislative intent, or where it is possible to carry the provisions of the statute into effect according to its letter.”

It was also stated by the court in *Smith, et al vs. Buck*, 119 O. S., 101, at pages 103 and 104:

“We are asked to ascertain the intention of the legislature from facts extraneous to the Act * * * and then to interpret that which the legislature did enact as meaning that which we find, from such extraneous information and investigation.

This court, in the case of *Slingluff vs. Weaver*, 66 O. S., 621, 64 N. E., 574, declared:

‘The intent of the law makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and

distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has clearly expressed, and hence no room is left for construction.' ”

From the clear, unambiguous language used, it appears on the face of the statutes as amended, that the legislative intent was to require that the county engineer qualify as both a registered professional engineer and a registered surveyor. The enactment of supplemental Section 2782-1, General Code, changing the title of the office from “county surveyor” to “county engineer” is a further manifestation of this intent. The obvious purpose was to raise professional requirements and official qualifications prerequisite to holding this office and to insure that an incumbent be well qualified to discharge the various duties of such office.

The manifest meaning of the Act is further substantiated by reference to its legislative history. Section 2783 of House Bill No. 97, as first passed by the House of Representatives, read as follows:

“No person holding the office of clerk of court, sheriff, county treasurer, or county recorder shall be eligible to the office of county engineer. In all counties no person shall be eligible as a candidate for the office of county engineer or be elected or appointed thereto, except a registered professional engineer licensed to practice in the State of Ohio.” (*House Journal* for April 1, 1935; *House Journal* for April 2, 1935.)

This section of the Bill was amended in the Senate by the insertion of the words “and registered surveyor” after the word “engineer”. *Senate Journal* for April 4, 1935. In this form this Bill was enacted.

The insertion by the Senate of the requirement that the county engineer be a registered surveyor in addition to the requirement in the Bill as passed by the House of Representatives that he be a registered professional engineer clearly indicates the legislative intention to add a cumulative rather than a disjunctive requirement in the qualifications for office, and hence the sense does not require that “and” be read “or” as provided *inter alia* in Section 27 of the General Code.

It is believed that the above considerations are dispositive of your inquiries, but in more specific answer to your third question it may be observed that no language in Section 2783 lays any reasonable basis for any possible construction to the effect that two persons, one holding a surveyor’s and the other an engineer’s license, would be eligible for the office of county engineer.

No change was made in the duties of the office, no change was made in the amount of compensation or manner of payment, nor was any provision made for the election of more than one person, Section 2782, General Code, providing that "there shall be elected * * * a county surveyor * * *."

In specific answer to your inquiries, it is my opinion that:

Under the provisions of Section 2783, General Code, as amended by House Bill No. 97, enacted at the regular session of the 91st General Assembly, (116 O. L. 283);

1. In order to be eligible as a candidate or to be elected to the office of county engineer, it is necessary for a person to be both a registered professional engineer and a registered surveyor.

2. It is not contemplated under the provisions of said section, that two persons, one being only a registered professional engineer and the other being only a registered surveyor, may be candidates for or elected to or appointed to the office of county engineer.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4886.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT,
LUCAS COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, November 12, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4887.

APPROVAL, BONDS OF RUTLAND RURAL SCHOOL DISTRICT,
MEIGS COUNTY, OHIO, \$33,000.00 (UNLIMITED).

COLUMBUS, OHIO, November 12, 1935.

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