

3206.

APPROVAL, BONDS OF VILLAGE OF EUCLID, CUYAHOGA COUNTY,
\$22,500, FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, June 12, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3207.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
ASHTABULA AND COLUMBIANA COUNTIES.

COLUMBUS, OHIO, June 12, 1922.

*Department of Highways and Public Works, Division of Highways, Columbus,
Ohio.*

3208.

APPROVAL, BONDS OF CITY OF WELLSTON, \$23,000, FOR STREET
IMPROVEMENTS.

COLUMBUS, OHIO, June 12, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3209.

COUNTY COMMISSIONERS—NOT AUTHORIZED TO EMPLOY CON-
SULTING ENGINEER TO ASSIST SANITARY ENGINEER, SECTION
6602-1 G. C. CONSTRUED—MAY EMPLOY "COMPETENT SANITARY
ENGINEER"—SUCH EMPLOYEE MUST BE INDIVIDUAL NOT PART-
NERSHIP OR CORPORATION.

1. *County commissioners in counties having a population of less than 100,000 are unauthorized under the provisions of section 6602-1 G. C. to employ a consulting engineer to assist the sanitary engineer specified by a section in the discharge of his duties.*

2. *Section 6602-1 G. C. authorizes the employment by the county commissioners in counties having a population of less than 100,000 of "a competent sanitary engineer", and such employe under the terms of the statute may only be an individual. A partnership or corporation may not act in such capacity.*

COLUMBUS, OHIO, June 12, 1922.

HON. EARL C. KRUEGER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows:

"I have been requested by the board of county commissioners of Erie county, Ohio, to obtain from you an opinion upon the following, to-wit:

1. Under section 6602-1 of the General Code of Ohio, which provides for the employment of a competent sanitary engineer in counties of less than 100,000 population, can the commissioners also employ a consulting sanitary engineer in such counties having less than 100,000 population in addition to such sanitary engineer in the event that such sanitary engineer would require the services of a consulting engineer on certain special projects within the county in line with his duties?

2. Under this same section may the county commissioners employ as a competent sanitary engineer a partnership of engineers or a corporation of engineers, or must it be an individual?"

Under the provisions of section 6602-1 G. C., the authority of the county commissioners, in counties having a population of less than 100,000, to employ a sanitary engineer for purposes relevant to this act, is thought to be indicated in the following portion of the section which reads as follows:

"Any such board of county commissioners may employ a competent sanitary engineer for such time or times and on such terms as they deem best."

It would seem clear that the portion of the section quoted specifically authorizes the county commissioners in counties having a population of less than 100,000, to employ a competent sanitary engineer, to fix the time of such official's employment and evidently to determine the compensation to be paid in such event. It would seem obvious also, that the language used makes no provision for the employment of a "consulting engineer", such as your inquiry indicates, in addition to the sanitary engineer stipulated by the provisions of the section, and it would seem to be only reasonably concluded from the import of the language used, that the authority of the county commissioners in respect to the employment of sanitary engineers is limited to the employment of "a competent sanitary engineer" in such cases. It is thought to be the well established rule in this state, that county commissioners may only exercise such powers as are granted them by the legislature, and in all financial transactions may bind the county in such matters only when so authorized. *State ex rel. vs. Menning*, 95 O. S., 99. See also recent decision of the supreme court, dated November 22, 1921, and styled *State of Ohio on relation of H. D. Clarke, vs. W. H. Cook*, as Auditor of Ashtabula County, Ohio, in which the following language is used by the court:

"The legal principle is settled in this state, that county commissioners in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions, as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

Applying the legal principle quoted to your first question, it would seem obvious that a negative answer must be returned, since section 6602-1 G. C. apparently confers no authority upon the county commissioners to employ a consulting engineer in addition to that of the sanitary engineer indicated by the provisions of said section.

Relative to your second question, as to whether or not a corporation or partnership may act in the capacity of the "competent sanitary engineer" indicated by section 6602-1 G. C., attention is chiefly directed to the limited authority expressed by the words used in the phrase "a competent sanitary engineer", and it is to be concluded that the language employed does not authorize the employment of a number of sanitary engineers, but contemplates merely one "competent sanitary engineer", hence it would follow that a partnership or corporation of engineers would not meet the requirements of this section and it would seem apparent that only an individual under the circumstances may act in such capacity.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3210.

COUNTY SURVEYOR—SALARY—LEAVE OF ABSENCE TO ENTER
MILITARY SERVICE—ENTITLED TO SALARY DURING SUCH
LEAVE.

1. *A County surveyor is a public officer whose salary is fixed by statute (Sec. 7181 G. C.). Therefore, the salary is to be treated as an incident to the office itself, and not to the performance of the duties of the office (Opinion Vol. 1, p. 970, Opinions of Attorney-General, 1918, adhered to).*

2. *Where a county surveyor in the year 1918, filed application with the board of county commissioners for leave of absence without pay while in the military service of the United States, and the county commissioners passed a resolution purporting to grant such leave, and the county surveyor entered such military service and remained therein for the last six months of 1918 following his application for leave of absence, such county surveyor is not now barred from asserting a claim to payment of such salary. Accordingly, the salary for said period of six months constitutes a claim against the county, of which the surveyor is entitled to payment without reference to allowance or disallowance by the board of county commissioners.*

COLUMBUS, OHIO, June 12, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—You have requested the opinion of this department as to the following matter:

On June 17, 1918, the board of county commissioners of a certain county took action as shown by the following resolution appearing on their journal:

"Whereas, request has been made to the board of county commissioners of _____ county, by County Engineer _____, for leave of absence for an indefinite period of time (perhaps for remainder of term) or until his return from the United States service, the same to be without pay from and after July 3, 1918, until his return.

Therefore, it was moved by _____, seconded by _____, that the request of County Engineer _____, as stated in the foregoing be granted.

On roll call all voted aye."