

2895.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
GEAUGA COUNTY, OHIO.

COLUMBUS, OHIO, February 24, 1922.

Department of Highways and Public Works, Columbus, Ohio.

2896.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
MADISON COUNTY, OHIO.

COLUMBUS, OHIO, February 24, 1922.

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

2897.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
HIGHLAND COUNTY, OHIO.

COLUMBUS, OHIO, February 25, 1922.

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

2898.

DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS—DIRECTOR OF SAID DEPARTMENT FIXES COMPENSATION TO BE PAID BY STATE TO COUNTY SURVEYOR WHO HAS CHARGE WITHIN HIS COUNTY OF HIGHWAYS, BRIDGES AND CULVERTS UNDER CONTROL OF STATE—SUCH COMPENSATION TO BE PAID INTO COUNTY TREASURY.

The amendment of section 7182 G. C. in 109 O. L. 168, contemplates that the Director of Highways and Public Works shall fix compensation to be paid by the state to county surveyors in all cases where such county surveyors are designated to

have charge within their counties of highways, bridges and culverts under the control of the state. Such compensation may be fixed on a per diem basis having reference to the annual salary paid to the county surveyor by the county. Any compensation so earned by the county surveyor is to be paid by him into the county treasury to the credit of the general county fund.

COLUMBUS, OHIO, February 25, 1922.

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

GENTLEMEN:—Your letter of recent date is received reading as follows:

“In view of the amendment to section 7182 G. C. in 109 Ohio Laws, page 168, will you kindly render me an opinion as to whether it is incumbent upon me to fix compensation in all cases where the county surveyor is designated to have charge of highways, bridges and culverts in his county under control of the state; and if it is necessary to fix compensation in all such cases whether there is any objection to my fixing it on a per diem basis, having reference to the annual salary of the county surveyor.”

Prior to the time of its amendment in 109 Ohio Laws, page 168, said section 7182 read as follows (107 O. L. 110):

“The county surveyor shall have charge of all highways, bridges and culverts within his county under control of the state, unless another engineer be appointed for that purpose by the state highway commissioner in the manner hereinafter provided. When the county surveyor has charge of the highways, bridges and culverts of his county under control of the state an amount equal to one-fifth of his salary shall be paid by the state to the county upon warrants issued therefor by the auditor of state against the state highway improvement fund upon the requisition of the state highway commissioner. If an engineer other than the county surveyor be appointed by the state highway commissioner to have charge of the highways, bridges and culverts within any county and under the control of the state, the salary provided by law for the surveyor of such county shall be decreased by an amount equal to one-fifth thereof, and the salary of the county surveyor of such county shall so long as he does not have charge of the highways, bridges and culverts within his county and under the control of the state, be four-fifths of the amount otherwise provided by law. In any county in which an engineer other than the county surveyor has been appointed to have charge of the highways, bridges and culverts within such county and under control of the state the state highway commissioner may at any time when he deems it for the best interests of the public, remove such other engineer and designate either the county surveyor of such county or some other engineer to have charge of such highways, bridges and culverts under the control of the state. The county surveyor shall perform such duties in reference to the highways, bridges and culverts of his county, under the control of the state, as may be prescribed by law or by the state highway commissioner.”

Said section as amended in 109 O. L. 168, reads:

“The state highway commissioner may designate the county surveyor to have charge of all highways, bridges and culverts within his county under

control of the state or he may designate some other competent civil engineer to have charge of all highways, bridges and culverts within one or more counties and under control of the state. The county surveyor or other civil engineer designated as above shall perform such duties in reference to the highways, bridges and culverts under the control of the state and within the county or counties assigned to him as may be prescribed by law or by the state highway commissioner. The compensation of the engineer so appointed, whether such engineer be the county surveyor or whether he be some other person, shall be fixed by the state highway commissioner and the same shall be paid out of any funds available for the construction, improvement, maintenance and repair of inter-county highways. In the event the county surveyor is designated and receives such compensation, he shall forthwith upon the receipt of the same, pay it into the county treasury of his county to the credit of the general county fund. The state highway commissioner shall be authorized whenever he deems it expedient to revoke any designation or appointment made under the provisions of this section and to make a new designation or appointment."

In connection with the amendment, the general assembly repealed section 7185 G. C. as enacted in 107 O. L. 111. The substance of the latter section was that if in the opinion of the state highway commissioner, the county surveyor was neglecting his duties as to highways, etc., within his county under the control of the state, the state highway commissioner might appoint another engineer to have charge of such highways, etc., in which event, the salary of the county surveyor should be reduced by an amount equal to one-fifth of such salary.

It is to be observed that under the present form of section 7182 the county surveyor does not by virtue of his office take charge of highways, etc., under the control of the state, as was the case under the pre-existing form of section 7182, but that it is only when the state highway commissioner affirmatively designated the county surveyor, that the latter takes charge of such highways, etc. It is optional with the state highway commissioner whether he designates the county surveyor or some other competent civil engineer to have charge of such highways. Moreover, it is to be observed that the amended form of the section entirely eliminates the pre-existing provision for payment by the state to the county of an amount equal to one-fifth of the county surveyor's salary, when that officer is in charge of highways, bridges and culverts in his county, under the control of the state.

The present form of section 7182 leaves little room for doubt that the county is to be reimbursed for the time spent by the county surveyor in rendering services upon highways, bridges and culverts within the county, under the control of the state. It is quite true that from a practical standpoint such reimbursement of the county is of little or no value; for it is to be noted that the reimbursement is to be made out of inter-county highway funds alone, so that the effect of making the reimbursement will be simply to reduce the share of the counties in the inter-county highway fund and credit the general fund of the counties to the extent of such reduction. However, since the statute itself specifically provides for the fixing of a salary both in the case the county surveyor is designated and in the case some other engineer is designated, the only proper course to be pursued is to fix compensation for the county surveyor in all cases in which he is designated. Of course, all of such compensation as is earned by the county surveyor is to be immediately paid by him to the county treasury to the credit of the general county fund.

Your further question goes to the point of the method to be followed in paying compensation. It is understood that the plan which you suggest is to fix the com-

penation of the county surveyor in each county on a per diem basis calculated upon the yearly salary paid to the county surveyor by his county; and then make an allowance to the surveyor for each day he is engaged in work upon highways, bridges and culverts, under the control of the state. No objection is perceived to this plan. It is believed, furthermore, that an aggregate yearly maximum compensation might be fixed by you, beyond which the per diem payments will not be made.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2899.

MUNICIPAL CORPORATIONS—BUILDING DEPARTMENT OF CITY IS UNDER DIRECTOR OF PUBLIC SAFETY—ORDINANCE WHICH CONFERS SUCH POWERS ON PERSONS OR COMMISSIONS OTHER THAN SAID DIRECTOR IS VOID—CITY OF CANTON.

Under the provisions of section 4368 G. C., the director of public safety is the chief administrative authority over the charity correction, and building departments of the municipality, and a city ordinance which confers such powers and duties on persons or commissions other than said director of public safety, is void and of no effect.

COLUMBUS, OHIO, February 25, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date, reading as follows:

“The city of Canton has a building department and passed ordinances defining the scope, authority and power of the building commission (copies of such ordinances are herewith enclosed). The question arises as to the authority of such commission sought to be granted by ordinance 4885, in view of the provisions of section 4368 G. C., that:

‘Under the direction of the mayor, the director of public safety shall be the executive head of the police and fire department; he shall be the chief administrative authority of the charity, correction and building departments, etc.’

Question: May such building commission be established by council with independent authority, or would such commissioner be subject to the authority of the director of public safety?”

The copy of Ordinance No. 4885 which you enclosed with your letter, reads as follows:

“ORDINANCE NO. 4885.

Ordinance No. 4885, defining the duties of the Building Commissioner of the City of Canton.

Be it ordained by the Council of the City of Canton, State of Ohio.

Section 1. The Building Commissioner of the City of Canton shall