

I am therefore of the opinion in specific answer to your question, that the Board of Education of Fairfield Township, Butler County, Ohio, is possessed of a fee simple title in both the lots mentioned in your inquiry, and has full power to sell and convey a fee simple title to the same as soon as it is determined that they will not be needed for school purposes under the plan of centralization adopted by the board in effecting the centralization of the schools of the district as authorized by vote of the people.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

3100.

COUNTY SURVEYOR—EMPLOYMENT OF ASSISTANTS DISCUSSED.

*SYLLABUS:*

1. *County surveyors are authorized by Section 2981, General Code, to appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices.*

COLUMBUS, OHIO, January 5, 1929.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

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

“Am writing you in regard to the practical meaning of Section 2411 of the General Code of Ohio, upon request of our Board of County Commissioners.

Heretofore, the County Surveyor has been employing engineers, rod-men, inspectors, road superintendent, clerks, and whoever he desired to hire without any consultation with the County Commissioners whatever. We desire to know whether Section 2411 gives the County Commissioners the power to hire the engineers, rod-men, road superintendent, inspectors and clerks of the County Surveyor's office, or whether Section 2411 simply means that, upon request for extra services in cases of emergency, the Commissioners do this.

In looking under the heading of 'County Surveyors', I fail to find any Section authorizing the Surveyor to appoint these different members of his official family and so it looked to me as if the County Commissioners had this power, although they have never exercised it in this county.”

Section 2411, General Code, concerning which you inquire, reads as follows:

“When the services of an engineer are required with respect to roads, turnpikes, ditches or bridges, or with respect to any other matter, and when, on account of the amount of work to be performed, the board deems it necessary, upon the written request of the county surveyor, the board may employ a competent engineer and as many assistant engineers, rod-men and inspectors as may be needed, and shall furnish suitable offices, necessary books, stationery, instruments and implements for the proper performance of the duties imposed on them by such board.”

I am of the opinion that this section very clearly applies to the employment of additional help in the surveyor's office to take care of emergencies, or unusual volume of work. The following pertinent discussion of the section appears in Opinions of the Attorney General for 1917, Volume II, page 1418:

"When said Section 2411 is studied carefully, we find its scope to be entirely different from the matter upon which the court passed above. The engineer is employed for some specific matter or duty in reference to roads, turnpikes, ditches or bridges. He is employed for some particular work on account of the inability of the county surveyor to perform the same due to the amount of work which he already has on hand to perform. Further, the county surveyor must make a written request for assistants. The engineer so selected upon the request of the county surveyor has certain duties imposed upon him, as is evidenced by the latter part of the section, which provides that he shall be furnished with suitable offices, necessary books, stationery, instruments and implements for the proper performance of the duties imposed on him by such board of county commissioners.

In my opinion Section 2411, General Code, was enacted for the purpose merely of taking care of an emergency. For all the ordinary help which the county surveyor needs he himself appoints assistants and deputies, but when an emergency arises for which his ordinary office help is not sufficient, the county commissioners may, upon the request of the county surveyor, appoint assistants to take care of the emergency. Hence the engineer and the assistants provided for in Section 2411, General Code, are practically assistants to the county surveyor selected not by himself under Section 2788, General Code, but by the county commissioners."

Section 2788, General Code, referred to in the above quotation, has since been repealed, which accounts for your failure to find the general authority which you seek under the title "County Surveyors". Such authority is now found in Section 2981, General Code, under the title "Salaries of County Officers", which reads as follows:

"Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bonds with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office."

The term "such officers", appearing in the above quoted section, refers back to Section 2978, General Code, which reads as follows:

"Each probate judge, auditor, treasurer, clerk of courts, sheriff, surveyor and recorder, shall charge and collect the fees, costs, percentages, allowances and compensation allowed by law, and shall give to the person making payment thereof an official receipt in manner and form as may be prescribed by the bureau of inspection and supervision of public offices."

As above indicated, the authority for the appointment of employes in the surveyor's office was formerly found in Section 2788, General Code, under the title "County Surveyor", which section read as follows:

"The county surveyor shall appoint such assistants, deputies, draughtsmen, inspectors, clerks or employes as he deems necessary for the proper performance of the duties of his office, and fix their compensation, but compensation shall not exceed in the aggregate the amount fixed therefor by the county commissioners. After being so fixed, such compensation shall be paid to such persons in monthly installments from the general fund of the county upon the warrant of the county auditor."

This section, together with Section 2787, General Code, was formerly Section 1183, Revised Statutes, originally enacted in 98 O. L. 247, 296. Section 2978, General Code, *supra*, did not originally include the surveyor as one of the officers governed by the provisions of that and succeeding sections, including 2981. In 1919, Sections 2787 and 2788, General Code, were repealed and Section 2978, *supra*, was amended so as to include the word "surveyor", 108 O. L., Part 2, page 1203, 1217. This amendment served to make applicable Section 2981, *supra*, so that Section 2788, General Code, was no longer necessary, as the term "other employes" in Section 2981, General Code, was apparently sufficiently comprehensive to include draughtsmen, inspectors, etc., enumerated in the prior section.

In specific answer to your question therefore, you are advised that county surveyors are authorized by Section 2981, General Code, to appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General*

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3101.

APPROVAL, BONDS OF THE CITY OF WARREN, TRUMBULL COUNTY  
—\$20,500.00.

COLUMBUS, OHIO, January 5, 1929.