

OPINION 26

OFFICIAL OPINION NO. 26

October 22, 1970

Hon. Gene E. Snowden  
1433 Cherry Street  
Huntington, Indiana

Dear Senator Snowden:

In your request for my Official Opinion concerning the statutory construction of Acts of 1963, Ch. 131, as found in Burns' (1970 Supp.), Section 36-1122, *et seq.*, you asked specifically:

1. May a county receive the \$5,000 grant-in-aid subsidy if the county commissioners appoint the elected county surveyor as county highway engineer?
2. If the answer to question number one is "no," must the county return money received in a previous year?

ANALYSIS

The factual situation upon which you base your questions is as follows:

A registered professional engineer in Indiana took office as the County Surveyor of Lawrence County, on January 1, 1969, and was appointed County Highway Engineer on July 1, 1969. The county (pursuant to Burns' Section 36-1129—36-1131) received \$2,500 in 1969, which was applied toward his salary. However, on April 30, 1970, the Auditor of the State of Indiana directed the auditor of the county to return the \$2,500 payment for 1969 because the appointment of the county surveyor as a county highway engineer did not constitute a *full-time appointment* as required by Burns' Section 36-1122 *et seq.*

The Acts of 1963, Ch. 131, Sec. 9 as found in Burns' (1970 Supp.), Section 36-1130, provide that the county auditor of a county that employs a full-time county highway engineer shall annually certify this to the State Auditor. The follow-

ing section (Burns' 36-1131, *supra*), provides that the State Auditor, upon receipt of annual certification, shall distribute from the county highway engineer fund a grant-in-aid subsidy in the amount of \$5,000 which is to be applied exclusively toward the engineer's annual salary.

The controversy over payment of the grant-in-aid subsidy seems to come from the differing opinions of whether a county surveyor can also be a "full-time" engineer. Legislative intent is necessary to interpret the statute. As was said by the Court in *Walgreen Co. v. Gross Income Tax* (1947), 225 Ind. 418, 75 N. E. (2d), 784:

"In arriving at the meaning of the statute it must be considered as an entirety, each part being considered with reference to all the other parts. The statutes are not to be considered as isolated fragments of law, but as parts of one great system."

Reading the title of the 1963 Act and the various sections of the Act, it is obvious that the Legislative intent of the Act is to authorize the employment of full-time engineers and to provide for the qualification, terms of appointment, duties and salary of these engineers. The purpose of the Act is to encourage the employment of qualified persons to plan and supervise the planning, construction and maintenance of county highways and roads. Toward this end, a special fund was created and designated for the specific purpose of assisting those counties complying with the Act by granting aid subsidies to be applied exclusively toward the annual salary of a qualified, full-time county engineer.

The statute specifically sets out at Burns' 36-1123, *supra*:

"The county highway engineer shall be a registered engineer, licensed by the Indiana State Board of Professional Engineers, experienced in highway engineering and constructions and be or become a resident of the state of Indiana during his employment. *The board of county commissioners may employ the duly elected county surveyor of the county as the county highway engineer, provided the surveyor is a registered engineer and licensed by the state board of registration.*"  
(My emphasis)

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That the Legislature intended for the board of county commissioners to be able to appoint the county surveyor, if he meets the other statutory requirements, is clear. It follows, therefore, since the entire Act and all other provisions therein are concerned only with the full-time employment of county highway engineers, the Legislature had this full-time requirement in mind when in Burns' Section 36-1123, *supra*, it provided that the Board of County Commissioners could employ the "duly elected county surveyor of the county as the county highway engineer."

## CONCLUSION

Therefore, it is my opinion that if a county has employed the duly elected county surveyor as the county highway engineer, and if he is a "registered engineer and licensed by the State Board of Registration," the county has met the requirements of this Act and is entitled to the subsidy provided by Burns' Section 36-1122, *supra*.

Since the answer to question number one is "Yes," the answer to question number two is unnecessary.