ACCOUNTS, BOARD OF: Whether county engineer can be legally employed by state highway commission; if so, whether such action vacates his position as county engineer.

June 10, 1933.

Hon. W. P. Cosgrove,
State Examiner,
Indianapolis, Indiana.

Re: Employment of County Surveyor by the Highway Commission.

Dear Sir:

I have your letter of June 7 in which you ask two questions.

1. "Can a county engineer be legally employed by the state highway commission?"

2. "If a county engineer accepts a position or employment from the state highway commission does such action on the part of the county engineer vacate his position as county engineer?"

I am unable to find such officer as you describe as county engineer, but I am of the opinion that you refer to the county surveyor and therefore, I shall answer your questions, keeping in mind that officer.

Section 2, Article 6 of the Constitution provides, that:

"There shall be elected, in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor. * * *

Section 11954 of Burns Revised Statutes, 1926, provides as follows:

"There shall hereafter be elected, at the general election in each county, by the qualified voters thereof, a county surveyor, who shall give bond in the sum of one thousand dollars, and shall continue in office from the first Monday in November thereafter for the term of two years."

Section 9, Article 2 of the Constitution of the State of Indiana provides as follows:
“No person holding a lucrative office or appointment under the United States, or under this state, shall be eligible to a seat in the general assembly; nor shall any person hold more than one lucrative office at the same time, except as by this Constitution expressly permitted.” * * *

Every office for which there is compensation provided by law is a lucrative office. The statute of the State of Indiana provides for a salary of the county surveyor and therefore, the office of county surveyor is a lucrative office within the meaning of the Constitution.

Your letter does not specifically define the “position or employment” that the highway commission is to give to the county engineer and, therefore, it is a little hard to determine whether it is such an office as is contemplated and defined by the statute as a lucrative office.

The general principle, however, would be as follows: If a person holding a lucrative office accepts another lucrative office, he thereby abandons the first office. County officials are required to reside within their counties and to personally supervise the business of their office, and if they voluntarily leave the county or place themselves in such a situation that they cannot discharge their duties, the office will be deemed vacated.

Therefore, I conclude that if the employment of the county surveyor by the highway commission is lucrative, the acceptance of such office will be construed as the abandonment of county surveyor or, on the other hand, if the employment of the county surveyor by the highway commission would require the county surveyor to reside out of his county, or place him in such a situation that he could not discharge the duties of county surveyor, then in my opinion, such conduct would be construed as an abandonment or a vacation of office of county surveyor.