1964 O. A. G.

OFFICIAL OPINION NO. 62

November 5, 1964

Hon. W. Wayne Townsend
State Representative
R. R. 1
Upland, Indiana

Hon. Richard E. Treber
State Representative
3654 South Washington Street
Marion, Indiana

Dear Representatives Townsend and Treber:

This is in response to your letter of October 16, 1964, wherein you request an Official Opinion. Your question is set forth in the following query contained in your letter:

"We request an official opinion from your department * * * relative to whether or not a duly elected County Surveyor can also receive compensation while acting as County Highway Engineer and at the same time receive his regular salary for acting as Surveyor?"

The authorization for the employment of and details in connection with the position of county highway engineer is provided in the Acts of 1963, Ch. 131, Secs. 1 to 12, inclusive, as found in Burns' (1964 Supp.), Sections 36-1122 to 36-1133, inclusive.

The title of said 1963 Act reads as follows:

"AN ACT authorizing boards of county commissioners to employ full-time county highway engineers and prescribing their powers and duties; making an appropriation; and transferring certain powers and duties of county surveyors to county highway engineers employed pursuant to the provisions of this act.” (Our emphasis)

The following sections of said 1963 Act are applicable in a consideration of your question:
36-1122 "The board of county commissioners of any county or any two [2] counties, acting jointly, may employ a full-time county highway engineer who shall be responsible for the supervision of the design, construction, planning, traffic, and other engineering functions of the county highway department under the policies and directions established by the board, and who shall prepare or cause to be prepared all surveys, estimates, plans and specifications which are required." (Our emphasis)

36-1123 "The county highway engineer shall be a registered engineer, licensed by the Indiana State Board of Registration for 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." (Our emphasis)

36-1125 "The county highway engineer shall receive a salary fixed by the board of county commissioners and shall also be allowed actual traveling and other expenses incurred in the discharge of the duties of the office, salary and expenses to be payable out of county general funds, and/or the county distribution of motor vehicle highway account funds, and the county highway engineer fund. The board of county commissioners shall provide all facilities, equipment and personnel reasonably required by the county highway engineer in the discharge of the duties of the office."

36-1128 "County highway engineers employed pursuant to the provisions of this act shall perform the duties of the office of county surveyor which relate to roads and bridges and to this effect and to the extent applicable, the provisions of 1 R. S. 1852, Chapter 103 and all acts amendatory or supplemental thereto are hereby incorporated in this act by reference."
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36-1129 "There is hereby appropriated each year from the counties' share of the April distribution of the motor vehicle highway account, the sum of four hundred sixty thousand dollars [$460,000] to be held by the state auditor in a special account known as the County Highway Engineer Fund, which shall be used exclusively in assisting the counties in the employment of a full-time county highway engineer." (Our emphasis)

It will be noted that the Legislature has placed repeated emphasis on the words "full-time" notwithstanding the fact that the act also authorizes the board of county commissioners to employ the duly elected county surveyor of the county as the county highway engineer.

The duties of a county highway engineer, as prescribed in said 1963 Act, are set forth in Burns' (1964 Supp.), Section 36-1127. An examination of this section indicates that these duties are those which are inherent to the office of county surveyor where there is no county highway engineer or county highway supervisor. Therefore, in the event that a board of county commissioners does appoint a county surveyor to be the county highway engineer, the inherent duties are merely returned to the office of county surveyor.

It is axiomatic that the prime object of statutory construction is to ascertain and effectuate the intent of the Legislature. In the case of Walgreen Company v. Gross Income Tax Division (1947), 225 Ind. 418, 421, 75 N. E. (2d) 784, the court said:

"In arriving at the meaning of a statute it must be considered as an entirety, each part being considered with reference to all the other parts. Statutes are not to be considered as isolated fragments of law, but as parts of one great system. The Rushville Gas Co. v. The City of Rushville (1889), 121 Ind. 206, 213, 23 N. E. 72; Bradley v. Thixton (1889), 117 Ind. 255, 257, 19 N. E. 335; Morrison v. Jacoby (1887), 114 Ind. 84, 89, 90, 14 N. E. 546, 15 N. E. 806; 50 Am. Jur. § 349 Statutes pp. 345, 346.

"Judge Elliott stated this proposition well in Humphries v. Davis (1885), 100 Ind. 274, at page 284, thus:
"A statute is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws. It is not to be expected that a statute which takes its place in a general system of jurisprudence shall be so perfect as to require no support from the rules and statutes of the system of which it becomes a part, or so clear in all its terms as to furnish in itself all the light needed for its construction. It is proper to look to other statutes, to the rules of the common law, to the sources from which the statute was derived, to the general principles of equity, to the object of the statute, and to the condition of affairs existing when the statute was adopted. . . . Statutes are to be so construed as to make the law one uniform system, not a collection of diverse and disjointed fragments."

Therefore, the Acts of 1963, Ch. 131, supra, must be read in connection with the latest salary law pertaining to the office of county surveyor.

The County Officers' Salary Act of 1957, being the Acts of 1957, Ch. 319, Secs. 3 and 10, as found in Burns' (1964 Supp.), Sections 49-1055 and 49-1062, provide in whole, or in part, respectively, as follows:

49-1055 "The annual salaries fixed by this act shall be in full for all services and in lieu of all fees, per diems, penalties, fines, interest, costs, forfeitures, commissions, percentages, allowances, mileage, and any and all other remuneration whatsoever for official services or involving official authority except as herein otherwise provided. Such salary shall be paid in twelve [12] equal monthly installments. County officers shall be entitled to all fees earned by them prior to the effective date of this act regardless of when paid." (Our emphasis)

49-1062 "The salary for a county surveyor who is not a registered engineer shall be:

Class 1, $6,600.00; Class 2, $5,400.00;
Class 3, $4,600.00; Class 4, $4,000.00;
Class 5, $3,600.00; Class 6, $3,200.00;
Class 7, $2,800.00; Class 8, $2,600.00;
Class 9, $2,400.00; Class 10, $2,200.00;
Class 11, $2,000.00; Class 12, $1,800.00;
Class 13, $1,600.00.

"If the county surveyor is registered under the Indiana board of registration for engineers and land surveyors, then the salary shall be one and one-half \([1\frac{1}{2}]\) times the base salary as set out above. If the county surveyor is registered as above set out, then the county council may increase the salary of one and one-half \([1\frac{1}{2}]\) the base salary by any amount not to exceed \$2,000.00 per year. * * * Provided, however, that if the county surveyor is by the board of county commissioners appointed highway superintendent and the compensation as such highway superintendent as fixed by said board is greater than the salary herein fixed, said compensation so fixed shall be in lieu of the salary herein named; otherwise the salary herein named shall be the salary of the surveyor." (Our emphasis)

Particular attention is invited to the above proviso which the Legislature enacted relative to the situation where a county surveyor is also appointed highway superintendent. It is emphasized that no such proviso has been enacted relative to the situation where a county surveyor is also appointed county highway engineer.

The Acts of 1963, Ch. 131, Sec. 4, as found in Burns' 36-1125, supra, provides for the payment of salary to the county highway engineer. However, no mention is made for any provision in the event that the county commissioners employ the county surveyor to perform these duties.

Burns' 49-1062, supra, makes the following provisions where the county surveyor "is registered under the Indiana board of registration for engineers and land surveyors":

(1) A base classification for salary, in one of thirteen (13) classes, and in the base amount shown for the appropriate classification, and
(2) A raising of the salary to one and one-half (1½) times the base salary, and

(3) Then the county council may increase the salary of one and one-half (1½) the base salary by any amount not to exceed $2,000.00 per year.

Therefore, it is my opinion, in answer to your question, that notwithstanding the fact that a duly elected county surveyor also be employed by the board of county commissioners to serve as a county highway engineer, such county surveyor is limited by the provisions of Burns' 49-1055 and 49-1062, supra, as to the total amount of salary which he may draw for all services.

OFFICIAL OPINION NO. 63

November 17, 1964

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. McDonald:

This is in answer to your recent letter which raises the following questions:

"1. Are the revenues from off-street parking facilities operated pursuant to Burns 48-8470 et seq. and 48-8491 et seq., where there are no tax funds or levies involved, subject to appropriation by the common council or town board respectively?

"2. If your answer to question one is yes, is appropriation by the common council or town board sufficient or is approval of the State Board of Tax Commissioners also required?"

An examination of the statutes cited in your letter does not disclose any specific provisions relating to the expenditures