

487.

SANITARY ENGINEER—MAXIMUM COMPENSATION NOT TO EXCEED
THAT RECEIVED BY COUNTY AUDITOR DURING CURRENT YEAR.

COLUMBUS, OHIO, June 25, 1923.

SYLLABUS;

The county commissioners of the several counties of this state may employ a competent sanitary engineer for such time or times and on such terms as they deem best, but in no event may the maximum compensation received by such sanitary engineer, however, such compensation may be determined, exceed the amount of compensation received during the current year by the county auditor.

HON. ALBERT H. SCHARER, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your statement of facts and request for an opinion, as follows:

“The last session of the General Assembly of the State of Ohio passed House Bill No. 23, therein amending and supplementing certain sections of the county sanitary sewer law. Contained in this bill is found section 6602-14, primarily intended to compensate the county commissioners in addition to their regular salary for services rendered in connection with county sanitary work, ‘provided, however, that the maximum compensation received by any commissioner or sanitary engineer serving in any county affected by this measure shall not exceed the amount of compensation received during the current year by the county auditor serving in the said county.’

This provision is very ambiguous and the interpretation of it may vitally affect the operation of not only the Montgomery Sanitary Department but all similar departments in the state. It may be necessary to completely reorganize this department and in view of this fact we ask an early, thorough opinion of the meaning of this statute.

Montgomery county employs a Sanitary Engineer on a commission basis, inasmuch as this engineer pays all his help and supports the entire engineering division of the Sanitary Department, the commissions are naturally several times greater than the salary of the auditor. Under this circumstance, considering section 6602-1 (which is not repealed by House Bill No. 23.) and section 6602-14, contained in said bill:

1. Can the county commissioners of Montgomery county continue to employ a ‘Sanitary Engineer for such time or times and on such terms as they deem best’ on a commission basis, even though such commissions exceed the salary of the auditor?
2. If they can, and do, will they lose the compensation provided for them under section 6602-14, House Bill No. 23?
3. Does section 6602-14 pertain only where the Sanitary Engineer is on a salary basis and not as in Montgomery county, where he is paid a commission to furnish all the necessary engineering services involved in

any project, the sanitary engineer paying the salaries of all his help and their expenses out of his commission?"

Your proposition involves parts of section 6602-1 of the General Code as amended April 15, 1919, 108 O. L. Pt. 1, p. 368 and section 6602-14 of the General Code passed April 3, 1923, and filed in the office of the Secretary of State April 30, 1923, being House Bill No. 23.

The pertinent part of section 6602-1 of the General Code reads:

"Any such board of county commissioners may employ a competent sanitary engineer for such time or times and on such terms as they may deem best; and in any county having a population exceeding 100,000, the board of county commissioners may create and maintain a sanitary engineering department, to be under their supervision and in charge of a competent sanitary engineer, to be appointed by such board of county commissioners, for the purpose of aiding them in the performance of their duties regarding sanitation provided by law; and said board shall provide suitable rooms for the use of such department and shall provide for and pay the compensation of such engineer and all necessary expenses of such engineer and department which may be authorized by such board."

Section 6602-14 of the General Code, as found in House Bill No. 23, reads:

"In addition to the regular salary provided by law for county commissioners, each commissioner serving in a county having one or more regularly created county sewer districts, shall be paid the following amount; for time spent in connection with the establishing of any sewer district or the preliminary work preceding the awarding of any contract for either sewer or water improvements or both, or for the acquiring of sewer or water supply lines already constructed, the sum of five dollars per day for each day actually employed, but not exceeding the aggregate sum of seventy-five dollars on each or any sewer or water improvements; for each and every sewer or water improvement actually installed under this act, a sum equivalent to the following schedule of costs for all improvements or parts of improvements actually constructed during the current year ending June 30th; for the first \$200,000, one-third of one per cent; for all above \$200,000, and not exceeding \$400,000, one-fourth of one per cent; for all above \$400,000, and not exceeding \$600,000, one-sixth of one per cent; for all above \$600,000, one-tenth of one per cent, provided however, that *the maximum compensation received by any commissioner or sanitary engineer serving in any county affected by this measure shall not exceed the amount of compensation received during the current year by the county auditor serving in the said county.* The cost of any improvement shall be determined by estimates paid to the contractor for such improvements plus the cost of all engineering, publication and other costs of such improvements, as defined in this act, exclusive of the compensation provided in this section. The method of payment of the above shall be as follows—the sum of five dollars per day, as specified above, shall be paid by warrants issued by the county auditor upon the county treasurer upon the filing in the county auditor's office of an itemized statement by each county commissioner for such service. For improvements actually installed, as specified above, payments shall be made by warrants issued by the county auditor

upon the county treasurer upon the filing in the county auditor's office of a bill properly authorized and certified by the county sanitary engineer, based upon monthly estimates of work constructed by any contractor or contractors regularly engaged in performing work upon any sewer or water contract or both plus the engineering and incidental costs as provided in this act exclusive of the compensation provided in this section. The funds to pay the above additional compensation to county commissioners shall be included in the incidental cost of each improvement, and the moneys shall be provided as already provided in this act. In the event that any improvement, either sewer or water or both, is installed upon which a per diem fee has been previously paid, deduction shall be made of the amount so paid when the bills based upon the percentage allowance are regularly presented to the county auditor by the sanitary engineer for payment."

It will be noted that section 6602-1 of the General Code provides for the laying out and establishing of one or more sewer districts by the county commissioners; for the construction, operation and maintenance of sewer systems, the employment of a competent sanitary engineer for such time or times and upon such terms as the county commissioners deem best, and, in a county having a population exceeding 100,000, the county may create and maintain a sanitary engineering department.

Under the provisions of this section the county commissioners are authorized to employ a sanitary engineer, and without limitation, fix his compensation. While section 6602-14 of the General Code deals, primarily, with compensation of the county commissioners, it contains the one provision relating to the compensation of the sanitary engineer, providing that "the maximum compensation received by any commissioner or sanitary engineer serving in any county affected by this measure shall not exceed the amount of compensation received during the current year by the county auditor serving in the said county." The section being a later enactment than section 6602-1 of the General Code, this provision relating to compensation controls, and modifies the provisions of the former enactment relating to compensation. It will be noted that section 6602-14 of the General Code deals only with compensation, and contains no provision relating to the employment of a sanitary engineer. It will be further noted that these sections use the word "compensation" throughout. "Compensation" is defined as that which compensates; payment, amends, and would include and be the amount the sanitary engineer would receive under his employment whether that amount was a fixed salary or ascertained upon a commission basis.

It would follow, in answer to your questions generally, that the county commissioners may employ a competent sanitary engineer for such time or times and on such terms as they deem best, but in no event may the maximum compensation received by such sanitary engineer, however such compensation may be determined, exceed the amount of compensation received during the current year by the county auditor.

Respectfully,

C. C. CRABBE,

Attorney General.