

May 9, 2014

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
59 North Main Street
London, Ohio 43140

SYLLABUS:

2014-019

1. When a board of county commissioners proposes to enter into an agreement with the county engineer pursuant to R.C. 315.14, it must offer to pay reasonable compensation to the county engineer for performance of duties under the agreement.
2. The statutory duties of a county sanitary engineer are set forth almost exclusively in R.C. Chapters 343 (solid waste management districts), 6103 (county water supply systems), and 6117 (county sewer districts). Of these chapters, only R.C. Chapter 6117 expressly assigns duties related to ditches to a county sanitary engineer.
3. R.C. 6117.01(B)(1) describes a board of county commissioners' authority to acquire, construct, maintain, and operate drainage facilities for a county sewer district, but does not limit the drainage facilities duties that a county sanitary engineer may be required to perform under R.C. Chapter 6117. A county sanitary engineer must perform, as necessary, each duty imposed upon the position of county sanitary engineer by R.C. Chapter 6117.
4. A county engineer is required to perform the statutory duties set forth in R.C. 315.08 regardless of whether the county engineer has entered into an agreement with the board of county commissioners pursuant to R.C. 315.14.
5. A county engineer has numerous statutory duties related to drainage and ditches, including, but not limited to, those set forth in R.C. Chapters 6131 (single county ditches), 6133 (joint county ditches), 6135 (interstate county ditches), and 6137 (ditch maintenance fund). Pursuant to R.C. 6137.06, a county engineer has "general charge and supervision of the repair and maintenance of all county and joint county ditches, drains, watercourses, and

other drainage improvements within his county constructed under” R.C. Chapters 6131, 6133, 6135, and R.C. 6137.051.

6. Article II, § 20 of the Ohio Constitution and R.C. 325.14 prohibit a board of county commissioners from offering additional compensation to the county engineer for performing duties under R.C. 315.08 or R.C. Chapters 6131, 6133, 6135, or 6137.



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OPINION NO. 2014-019

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
59 North Main Street
London, Ohio 43140

Dear Prosecutor Pronai:

We have received your request for an opinion regarding the allocation of duties between a county engineer and a county sanitary engineer with respect to county ditches and drainage. In 2013 Op. Att’y Gen. No. 2013-016, at 2-154, we advised you that a board of county commissioners may either (1) hire a registered professional engineer other than the county engineer to perform the duties of the county sanitary engineer or (2) assign the performance of such duties to the county engineer by means of an agreement under R.C. 315.14. You have presented additional questions that predominantly relate to the delineation of duties between a county engineer and a county sanitary engineer:

1. If no monetary compensation is offered to be paid to the county engineer for performance of the county sanitary engineer job, is it still an offer of employment?
2. Are the duties of the county sanitary engineer with regards to drainage facilities under R.C. Chapter 6117 limited by the provisions of R.C. 6117.01(B)(1)?
3. What are the statutory duties of the county sanitary engineer in general and specific to ditch maintenance?
4. If the county engineer has not contractually agreed to perform the duties of the county sanitary engineer, is he still required to perform the drainage and ditch work outlined in R.C. 315.08 as part of his statutory duties as county engineer?
5. If the county engineer has not contractually agreed to perform the duties of the county sanitary engineer, what statutory duties does the county engineer have pertaining to drainage and ditches other than those related to the right of way on county roads?

6. What are the statutory duties of the county engineer with regard to drainage facilities not acquired, constructed, maintained, or operated under R.C. Chapter 6117?
7. May a board of county commissioners offer additional compensation to the county engineer to perform drainage work not performed under R.C. Chapter 6117, but rather under R.C. 315.08 or R.C. Chapters 6131, 6133, 6135, or 6137?¹

Overview of County Engineer Duties and County Sanitary Engineer Duties

Before addressing your questions, it is helpful to begin with a brief overview of the duties of a county engineer and a county sanitary engineer, respectively. While the duties of a county engineer are numerous and described throughout various chapters of the Revised Code, they primarily relate to the construction and upkeep of county roads, bridges, and highways. *See, e.g.*, R.C. 315.08; R.C. 315.13; R.C. 5543.01; R.C. 5543.09; R.C. 5555.06; *see also* 2013 Op. Att’y Gen. No. 2013-002, at 2-18. The general duties of a county engineer are set forth in R.C. 315.08:

The county engineer shall perform for the county all duties authorized or declared by law to be done by a registered professional engineer or registered surveyor, except those duties described in [R.C. 307.37, R.C. 307.38, R.C. Chapters 343, 6103, and 6117].² The engineer shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county. (Footnote added.)

Additionally, a county engineer is assigned various responsibilities and duties with respect to ditch and drainage improvements under R.C. Chapters 6131 (single county ditches), 6133 (joint county ditches), 6135 (interstate county ditches), and 6137 (ditch maintenance fund). *See* 2013 Op. Att’y Gen. No. 2013-002, at 2-18; *see also* 1942 Op. Att’y Gen. No. 4728, p. 32, at 36 (“[t]he county engineer has numerous duties to perform. His duties include not only work on public roads and highways but, among other things, county ditch improvements”).

¹ We have reordered and reworded your questions for ease of discussion.

² As we explain later in this opinion, R.C. Chapters 343, 6103, and 6117 set forth the statutory duties of a county sanitary engineer.

The statutory duties of a county sanitary engineer are set forth almost exclusively in R.C. Chapters 343, 6103, and 6117.³ Pursuant to R.C. Chapter 343, a county sanitary engineer is responsible for assisting the board of county commissioners in establishing and maintaining a county solid waste management district or participating in a joint solid waste management district (JSWMD).⁴ R.C. 343.01(D); *see also* R.C. 343.01(G)(2); R.C. 343.04. R.C. Chapter 6103 assigns a county sanitary engineer various duties with respect to the county's acquisition, construction, maintenance, and operation of public water supply facilities. *See, e.g.*, R.C. 6103.02(B); R.C. 6103.05; R.C. 6103.051; R.C. 6103.06; R.C. 6103.11; R.C. 6103.15; R.C. 6103.20(B). *See generally* R.C. 6103.01(A) (defining "[p]ublic water supply facilities" for purposes of R.C. Chapter 6103). Finally, pursuant to R.C. Chapter 6117, a county sanitary engineer is responsible for aiding the board of county commissioners in establishing and maintaining one or more county sewer districts. *See, e.g.*, R.C. 6117.01(E)-(F); R.C. 6117.06-.061; R.C. 6117.07; R.C. 6117.28; R.C. 6117.32; R.C. 6117.38(B). R.C. 6117.01(C) authorizes a board of county commissioners to create a sanitary engineering department, headed by the county sanitary engineer, "for the purpose of aiding it in the performance of its duties under [R.C. Chapters 6117 and 6103] or its other duties regarding sanitation, drainage, and water supply provided by law." Thus, the statutory duties of a county sanitary engineer relate almost exclusively to solid waste management districts (R.C. Chapter 343), county water supply systems (R.C. Chapter 6103), and county sewer districts (R.C. Chapter 6117).

³ In addition to the duties set forth in R.C. Chapters 343, 6103, and 6117, a county sanitary engineer has statutory duties under R.C. 711.101 and R.C. 3734.52-575. *See* R.C. 343.01(D) (a county sanitary engineer shall assist a board of county commissioners operating a county solid waste management district or a board of directors operating a joint solid waste management district (JSWMD) in the performance of their duties under R.C. 3734.52-575, which require the establishment of a solid waste management plan); R.C. 711.101 (a county sanitary engineer shall act in an advisory capacity to the board of county commissioners in preparing specifications, orders, inspections, examinations, and certificates for use in the plat approval process under R.C. Chapter 711).

⁴ A board of county commissioners must either establish and maintain a county solid waste management district or participate in establishing and maintaining a JSWMD. R.C. 343.01(A); R.C. 3734.52(B); 2013 Op. Att'y Gen. 2013-044, at 2-416 n.1. If a board of county commissioners chooses to establish and maintain a county solid waste management district, the county sanitary engineer must assist the board of county commissioners in the performance of its duties under R.C. Chapter 343 and R.C. 3734.52 to R.C. 3734.575. R.C. 343.01(D). If a board of county commissioners instead chooses to participate in a JSWMD, the county sanitary engineer may be selected to serve as the sanitary engineer of the JSWMD and, if so selected, must assist the board of directors of the JSWMD in performance its duties under R.C. Chapter 343 and R.C. 3734.52 to R.C. 3734.575. R.C. 343.01(D).

County Engineer's Performance of County Sanitary Engineer's Duties

In 2013 Op. Att'y Gen. No. 2013-016, at 2-143, we explained that a county engineer is not responsible for performing any duties of the county sanitary engineer unless he has entered into an agreement with the board of county commissioners pursuant to R.C. 315.14. R.C. 315.14, which sets forth various duties of a county engineer, authorizes a board of county commissioners to enter into an agreement with the county engineer whereby the board compensates the county engineer for performing duties of the county sanitary engineer. 1996 Op. Att'y Gen. No. 96-025 (syllabus). It states, in part:

[The county engineer] shall make all surveys required by law, shall perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the authority of the board, and shall perform other duties as the board requires, provided that the duties described in ... [R.C. Chapters 343, 6103, and 6117, which set forth the duties of the county sanitary engineer,] shall be performed only pursuant to an agreement between the county engineer and the board [of county commissioners]. An agreement of that type may provide for the county engineer's performance of duties described in one or more of those sections or chapters, and may provide for the county engineer's performance of all duties imposed upon a county sanitary engineer under [R.C. Chapters 6103 and 6117] or only the duties imposed upon a county sanitary engineer under [R.C. Chapter 6117] in relation to drainage. The board shall determine the compensation for performance of the relevant duties described in ... [R.C. Chapters 343, 6103, and 6117] and shall pay the county engineer from funds available under the applicable section or chapter or from the general fund of the county.

R.C. 315.14. When a county engineer enters into an agreement with a board of county commissioners pursuant to R.C. 315.14, he agrees to perform some or all of the statutory duties of the county sanitary engineer *in addition to his statutory duties as county engineer*. See 2013 Op. Att'y Gen. No. 2013-016, at 2-147. That is, he agrees to perform some or all of the duties assigned to a county sanitary engineer by R.C. Chapters 343, 6103, and 6117. Regardless of whether a county engineer enters into an agreement under R.C. 315.14, he must continue to perform his statutory duties as county engineer.

In the 2013 opinion, we also explained that a board of county commissioners may hire a registered professional engineer other than the county engineer to perform duties of the county sanitary engineer. 2013 Op. Att'y Gen. No. 2013-016 (syllabus, paragraph 3). However, when a board of county commissioners hires someone other than the county engineer as the county sanitary engineer, R.C. 6117.01(C) imposes a certain obligation upon the board with respect to drainage facilities of a county sewer district. Specifically, before assigning drainage facilities duties to the county sanitary engineer, "if the county sanitary engineer is not the county engineer, the board [of county commissioners] first shall offer to enter into an agreement with the county engineer pursuant to [R.C. 315.14] for assistance in the performance of those duties of the board pertaining to drainage facilities." R.C. 6117.01(C). This means that before a board of county commissioners assigns

drainage facilities duties under R.C. Chapter 6117 to the county sanitary engineer, it must offer the county engineer the opportunity to enter into an agreement whereby the board will compensate the county engineer for performing those duties in lieu of their performance by the county sanitary engineer. *See* R.C. 315.14 (an agreement between a board of county commissioners and a county engineer under this section may provide that the county engineer is to perform only the duties imposed upon a county sanitary engineer under R.C. Chapter 6117 in relation to drainage). *See generally* R.C. 6117.01(A)(3) (defining “[d]rainage facilities” for purposes of R.C. Chapter 6117). The county engineer must accept or reject the board of county commissioners’ offer within thirty days after it is made. R.C. 6117.01(C). With this background in mind, we will now proceed to address the specific questions that you have posed.

Compensation of County Engineer pursuant to an Agreement under R.C. 315.14

Your first question asks whether a board of county commissioners makes an offer of employment to the county engineer when it proposes to pay him no monetary compensation for performing duties of the county sanitary engineer. Presumably, you wish to know whether a board of county commissioners satisfies its obligation under R.C. 6117.01(C) by offering to pay no monetary compensation to the county engineer for assistance in performance of its duties pertaining to drainage facilities under R.C. Chapter 6117. We are of the opinion that when a board of county commissioners proposes to enter into an agreement with the county engineer pursuant to R.C. 315.14, the board must offer reasonable compensation to the county engineer for performance of duties under the agreement. R.C. 315.14 states, in part, that the board of county commissioners “shall determine the compensation for [the county engineer’s] performance of the relevant duties described in ... [R.C. Chapters 343, 6103, and 6117] and shall pay the county engineer from funds available under the applicable section or chapter or from the general fund of the county.” The express language of R.C. 315.14 thus requires a board of county commissioners to pay compensation to the county engineer when he performs duties of the county sanitary engineer pursuant to an agreement under R.C. 315.14. 1996 Op. Att’y Gen. No. 96-025, at 2-89 to 2-90; *see also* Ohio Legislative Service Comm’n, Final Analysis, Am. Sub. H.B. 201, 119th Gen. A., at p. 12 (as passed by the General Assembly).⁵ *See generally State v. Golphin*, 81 Ohio St. 3d 543, 545-46, 692 N.E.2d 608 (1998) (“use of the term ‘shall’ in a statute or rule connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary”). Accordingly, when a board of county commissioners proposes to enter into an agreement with the county engineer pursuant to R.C. 315.14, it must offer to pay reasonable compensation to the county engineer for performance of duties under the agreement. *See Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”); 1994 Op. Att’y Gen. No. 94-048, at 2-246 (“[a]ny exercise of discretion must be reasonable”).

⁵ 1991-1992 Ohio Laws, Part III, 3534 (Am. Sub. H.B. 201, eff. June 30, 1991, with certain sections effective on other dates) amended various provisions of the Revised Code, including R.C. 315.08 and R.C. 315.14.

Drainage Facilities Duties under R.C. Chapter 6117

Your second question asks whether R.C. 6117.01(B)(1) limits the drainage facilities duties that a county sanitary engineer may be required to perform under R.C. Chapter 6117.⁶ R.C. Chapter 6117 authorizes a board of county commissioners to create one or more sewer districts within the county outside of municipal corporations. R.C. 6117.01(B)(1). The board of county commissioners lays out the boundaries of the sewer district and employs the county sanitary engineer to aid the board in establishing and maintaining the district. R.C. 6117.01(B)-(C); *see also* 1977 Op. Att’y Gen. No. 77-010, at 2-37 (“[i]t is the sanitary engineer’s duty pursuant to R.C. 6117.01 to assist in the entire operation of the sewer district, and therefore [the county sanitary engineer] is vital to the proper operation of the district”). The county sanitary engineer’s duties under R.C. Chapter 6117 include preparing and revising, as needed, a general plan of sewerage or drainage for the county sewer district. R.C. 6117.06(A). The county sanitary engineer is also responsible for preparing detailed plans, specifications, estimates of cost, and tentative assessments for improvements performed under R.C. Chapter 6117. *See* R.C. 6117.06(C). The establishment and operation of a county sewer district involves the acquisition, construction, maintenance, and operation of “sanitary facilities,” *see* R.C. 6117.01(A)(1), “drainage facilities,” *see* R.C. 6117.01(A)(3), and “prevention or replacement facilities,” *see* R.C. 6117.01(A)(10). Your question asks only about a county sanitary engineer’s duties under R.C. Chapter 6117 with respect to drainage facilities.⁷

⁶ Throughout this opinion, we will discuss the statutory duties of a county sanitary engineer with the understanding that such duties may either be performed by a registered professional engineer other than the county engineer or assigned to the county engineer by means of an agreement under R.C. 315.14. *See* 2013 Op. Att’y Gen. No. 2013-016, at 2-154. We will refer to these duties as duties of the county sanitary engineer because even when they are performed by the county engineer, they remain duties of the position of county sanitary engineer and do not become statutory duties of the office of county engineer.

⁷ For purposes of R.C. Chapter 6117, “[d]rainage facilities” is defined to include:

storm sewers, force mains, pumping stations, and facilities for the treatment, disposal, impoundment, retention, control, or storage of waters; improvements of or for any channel, ditch, drain, floodway, or watercourse, including location, construction, reconstruction, reconditioning, widening, deepening, cleaning, removal of obstructions, straightening, boxing, culverting, tiling, filling, walling, arching, or change in course, location, or terminus; improvements of or for a river, creek, or run, including reinforcement of banks, enclosing, deepening, widening, straightening, removal of obstructions, or change in course, location, or terminus; facilities for the protection of lands from the overflow of water, including a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, retention or holding basin, control gate, or breakwater; facilities for controlled drainage, regulation of stream flow, and

R.C. 6117.01(B)(1) authorizes a board of county commissioners to acquire, construct, maintain, and operate within any sewer district sanitary or drainage facilities that the board determines to be necessary or appropriate: (1) for the collection of sewage and other wastes originating in or entering the sewer district; (2) to comply with the provisions of a contract entered into with another public agency for the joint use of sanitary or drainage facilities; (3) for the collection, control, or abatement of waters originating or accumulating in, or flowing into, or through, the district; or (4) to conduct the wastes and waters to a proper outlet and to provide for their proper treatment, disposal, and disposition.⁸ Thus, before a board of county commissioners may acquire, construct, maintain, or operate a drainage facility under R.C. Chapter 6117, the board must determine that the drainage facility is necessary or appropriate to meet one of the purposes set forth in R.C. 6117.01(B)(1).⁹ See Ohio Legislative Service Comm'n, Final Analysis, Sub. H.B. 549, 123rd Gen. A., at p. 19-20 (as passed by the General Assembly).¹⁰ R.C. 6117.01(B)(1) thus sets the parameters of a board of county commissioners' authority to acquire, construct, maintain, and operate drainage facilities for a county sewer district. You wish to know whether this, in turn, limits the drainage facilities duties that a county sanitary engineer may be required to perform under R.C. Chapter 6117.

Because the establishment and operation of a county sewer district involves the acquisition, construction, maintenance, and operation of drainage facilities, many of the duties imposed upon a county sanitary engineer by R.C. Chapter 6117 relate to the board of county commissioners' acquisition, construction, maintenance, and operation of drainage facilities, the authority for which is described in R.C. 6117.01(B)(1). See, e.g., R.C. 6117.06; R.C. 6117.07; R.C. 6117.28; R.C. 6117.32; R.C. 6117.38(B). However, R.C. 6117.01(B)(1) does not necessarily limit the drainage facilities duties that a county sanitary engineer may be required to perform under R.C. Chapter 6117. A county sanitary engineer must perform, as necessary, each duty imposed upon the position of county sanitary engineer by R.C. Chapter 6117. Some of the duties imposed upon a county sanitary engineer by R.C.

protection of an outlet; the vacation of a ditch or drain; equipment and furnishings; and all required appurtenances and necessary real estate and interests in real estate.

R.C. 6117.01(A)(3).

⁸ A board of county commissioners may acquire, construct, maintain, and operate drainage facilities *outside* of a county sewer district when it determines them "to be necessary or appropriate to conduct the wastes and waters to a proper outlet and to provide for their proper treatment, disposal, and disposition." R.C. 6117.01(B)(1).

⁹ Before proceeding with an improvement under R.C. Chapter 6117, a board of county commissioners must also make a general determination that the improvement is necessary for the preservation and promotion of the public health and welfare. See R.C. 6117.06(A), (E).

¹⁰ 1999-2000 Ohio Laws, Part III, 6178 (Sub. H.B. 549, eff. March 1, 2001) amended certain provisions of the Revised Code concerning county roads and county water supply, sanitary, and drainage facilities.

Chapter 6117 do not relate to the board of county commissioners' acquisition, construction, maintenance, or operation of drainage facilities. For example, R.C. 6117.01(E) requires a county sanitary engineer to supervise the construction of any sanitary or drainage facility that is done by any person in the county outside of a municipal corporation. Although this drainage facility duty does not fall within the scope of R.C. 6117.01(B)(1), it must be performed by the county sanitary engineer. Accordingly, the drainage facilities duties that a county sanitary must perform under R.C. Chapter 6117 are not limited by R.C. 6117.01(B)(1). Rather, a county sanitary engineer must perform all duties under R.C. Chapter 6117, including those related to drainage facilities, that are imposed upon the position of county sanitary engineer.

Duties of County Sanitary Engineer in Relation to Ditch Maintenance

Next you ask us to enumerate the general and specific statutory duties of a county sanitary engineer in relation to ditch maintenance. It is impractical for a formal opinion of the Attorney General to restate every statutory provision imposing duties upon a particular public position.¹¹ We will, however, provide you with a general overview of the duties of a county sanitary engineer as they relate to ditch maintenance. As explained earlier, the statutory duties of a county sanitary engineer are found almost exclusively in R.C. Chapters 343, 6103, and 6117 and relate almost exclusively to assisting a board of county commissioners in its duties with respect to solid waste management districts (R.C. Chapter 343), county water supply systems (R.C. Chapter 6103), and county sewer districts (R.C. Chapter 6117).

Of the chapters of the Revised Code that set forth duties of a county sanitary engineer, only R.C. Chapter 6117, governing county sewer districts, expressly references ditches. The drainage facilities that may be acquired, constructed, maintained, and operated under R.C. Chapter 6117 by a board of county commissioners, with the assistance of the county sanitary engineer, include, *inter alia*, "improvements of or for any channel, ditch, drain, floodway, or watercourse" and "the vacation of a ditch or drain[.]" R.C. 6117.01(A)(3); *see also* note 7, *supra*. Accordingly, in aiding the board of county commissioners in its duties under R.C. Chapter 6117 with respect to county sewer districts, a county sanitary engineer may be required to perform duties involving the maintenance of a ditch. *See generally* R.C. 6117.01(A)(7) (defining "maintain," "maintaining," and "maintenance" for purposes of R.C. Chapter 6117). For example, a county sanitary engineer may be required to perform work involving the vacation of a ditch or drain when such work is necessary or appropriate to the establishment, operation, or maintenance of a county sewer district. *See* R.C. 6117.01(B)(1).

R.C. Chapters 343 and 6103 do not expressly assign a county sanitary engineer any duties in relation to ditches. However, R.C. 343.01(D) provides that a sanitary engineer of a county that maintains a county waste management district or participates in a JSWMD "shall assist the board of county commissioners or [board of directors of the JSWMD] in the performance of their duties under

¹¹ Accordingly, this opinion should not be construed as providing an exhaustive list of the duties of a county sanitary engineer or a county engineer.

this chapter and [R.C. 3734.52 to R.C. 3734.575] and *shall be charged with any other duties and services in relation thereto that the board prescribes.*” (Emphasis added.) Similarly, with respect to county water supply systems, “[t]he county sanitary engineer or sanitary engineering department, in addition to other assigned duties, shall assist the board [of county commissioners] in the performance of its duties under this chapter and *shall be charged with other duties and services in relation to the board’s duties as the board prescribes.*” R.C. 6103.02(B) (emphasis added). Whether such additional duties may involve ditch maintenance work is a question that is beyond the scope of this opinion.

Duties of County Engineer Pursuant to R.C. 315.08

Your remaining questions ask about the statutory duties of a county engineer. First, you ask whether a county engineer is required to perform the drainage and ditch work described in R.C. 315.08 as part of his statutory duties if he has not contractually agreed to perform the duties of the county sanitary engineer. R.C. 315.08 provides that the county engineer shall perform for the county all duties authorized or declared by law to be done by a registered professional engineer or surveyor, except the duties described in R.C. 307.37-38 and R.C. Chapters 343, 6103, and 6117. The county engineer “shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, *drains, ditches*, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county.” R.C. 315.08 (emphasis added). R.C. 315.08 thus assigns a county engineer various duties with respect to county drains and ditches.

A county engineer is required to perform the statutory duties set forth in R.C. 315.08 whether or not he has agreed to perform the duties of county sanitary engineer pursuant to R.C. 315.14. When a county engineer enters into an agreement under R.C. 315.14, “he agrees to perform additional duties, those of the county sanitary engineer, that are neither incidental nor germane to his official duties as county engineer.” 2013 Op. Att’y Gen. No. 2013-016, at 2-147. Regardless of whether a county engineer agrees to perform those additional duties, his statutory duties as county engineer remain the same. That is, whether or not a county engineer enters into an agreement with the board of county commissioners under R.C. 315.14, he must continue to perform his statutory duties as county engineer. The final bill analysis of Sub. H.B. 549, which amended R.C. 315.14, explains:

Under continuing law, a county engineer must inspect all public improvements made under authority of the board of county commissioners; must make all surveys required by law; must perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the board’s authority; and must perform other duties that the board requires. One exception is that duties described in the Solid Waste Management Districts Law [R.C. Chapter 343], the County Water Supplies System Law [R.C. Chapter 6103] ... and the Sewer Districts and County Sewers Law [R.C. Chapter 6117] ... can be performed only pursuant to an agreement between the county engineer and the board of county commissioners.

Ohio Legislative Service Comm'n, Final Analysis, Sub. H.B. 549, 123rd Gen. A., at p. 5 (as passed by the General Assembly).

Nothing in R.C. 315.08 indicates that performance of the drainage or ditch duties set forth therein is contingent upon a county engineer agreeing to perform duties of the county sanitary engineer. Rather, R.C. 315.08 plainly and unambiguously assigns to a county engineer, regardless of his status as county sanitary engineer, duties with regard to county drains and ditches.¹² Accordingly, a county engineer is required to perform drainage and ditch work set forth in R.C. 315.08 regardless of whether he has entered into an agreement pursuant to R.C. 315.14 with the board of county commissioners.

Duties of County Engineer in Relation to Drainage and Ditches

Your fifth question asks us to enumerate the statutory duties of a county engineer that pertain to drainage and ditches, other than those related to the right of way on county roads. Similarly, your sixth question asks us to enumerate the statutory duties of a county engineer with regard to drainage facilities that are not acquired, constructed, maintained, or operated under R.C. Chapter 6117.¹³ Collectively, your fifth and sixth questions ask us to list the statutory duties of a county engineer that relate to drainage and ditches. While it is impractical for a formal opinion of the Attorney General to restate every statutory provision imposing duties upon a particular public office, we will provide a general overview of the statutory duties of a county engineer as they relate to drainage and ditches.

As explained in response to your previous question, R.C. 315.08 lists general duties of a county engineer. R.C. 315.08 excludes from the duties of a county engineer those duties set forth in

¹² Pursuant to R.C. 6117.01(C), a board of county commissioners may create a sanitary engineering department, headed by the county sanitary engineer, “for the purpose of aiding it in the performance of its duties under [R.C. Chapter 6117 and 6103] or its other duties regarding sanitation, drainage, and water supply provided by law.” This, however, does not relieve a county engineer of his statutory duties regarding drainage.

¹³ R.C. 6117.01(A)(3) defines the term “[d]rainage facilities” for purposes of R.C. Chapter 6117. *See note 7, supra.* The term is not otherwise defined in the Revised Code. Because you have asked about drainage facilities not acquired, constructed, maintained, or operated under R.C. Chapter 6117, R.C. 6117.01(A)(3)’s definition of drainage facilities is not directly applicable to your question. In common usage, the term “drainage facilities” is understood to include equipment, structures, devices, and other appurtenances that are designed to draw, dissipate, or otherwise remove surplus or surface water. *See Merriam-Webster’s Collegiate Dictionary* 378, 447 (11th ed. 2005); *see also* 2010 Op. Att’y Gen. No. 2010-027, at 2-197 n.1 (defining “storm water drainage facilities” for purposes of that opinion). In answering your sixth question, therefore, we will examine a county engineer’s duties as they relate to equipment, structures, devices, and other appurtenances designed to drain or otherwise remove surplus water under provisions of the Revised Code other than R.C. Chapter 6117.

R.C. 307.37-.38 and R.C. Chapters 343, 6103, and 6117, but otherwise requires a county engineer to “prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all ... drains [and] ditches ... constructed under the authority of any board within and for the county.” Similarly, R.C. 315.14 provides, in part, that a county engineer “shall make all surveys required by law, shall perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the authority of the board [of county commissioners], and shall perform other duties as the board requires[.]” Accordingly, both R.C. 315.08 and R.C. 315.14 declare that the general duties of a county engineer include drainage and ditch work. *See also* R.C. 325.14(A) (“[w]hen the [county] engineer performs service in connection with ditches or drainage work, the engineer shall charge and collect the per diem allowances or other fees provided by law” and pay them into the general fund of the county).

R.C. Chapters 6131, 6133, 6135, and 6137 assign a county engineer numerous duties that are related to drainage and ditches. R.C. Chapter 6131 governs single county drainage and ditch improvements¹⁴ and “places in the board of county commissioners control over drainage as a county-wide project.” 1976 Op. Att’y Gen. No. 76-080, at 2-275. Ditches constructed pursuant to R.C. Chapter 6131 “do not necessarily run along a public road, but, rather, run cross-country in order to provide controlled drainage for the land in the county.” 1981 Op. Att’y Gen. No. 81-039, at 2-156 (clarified by 1982 Op. Att’y Gen. No. 82-025). A landowner may request the board of county commissioners to proceed with a drainage or ditch improvement under R.C. Chapter 6131 by filing a petition with the clerk of the board of county commissioners. R.C. 6131.04. *See generally* R.C. 6131.01(A) (broadly defining “[o]wner” for purposes of R.C. Chapter 6131 as “any owner of any right, title, estate, or interest in or to any real property” including, *inter alia*, persons, partnerships, and

¹⁴ For purposes of R.C. Chapter 6131, “[i]mprovement” is defined to include:

- (1) The location, construction, reconstruction, reconditioning, widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse or floodway;
- (2) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;
- (3) A levee or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water;
- (4) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run;
- (5) The vacating of a ditch or drain.

R.C. 6131.01(C).

private and public corporations). When construction of an improvement under R.C. Chapter 6131 is contemplated, the county engineer must prepare a preliminary report that includes, among other things, an estimate of the improvement's cost and comments regarding the feasibility of the project. R.C. 6131.09. The county engineer must also participate in a public viewing of the location of the proposed improvement and a hearing regarding the improvement. R.C. 6131.10; *see also* R.C. 6131.07. If the board of county commissioners grants the petition for the improvement, the county engineer must make the necessary survey and complete maps, profiles, and plans for the improvement. R.C. 6131.14. Additionally, the county engineer must estimate the benefits accruing to each landowner from the improvement and prepare a schedule of assessments to be charged to each landowner, R.C. 6131.15, recommend the maintenance district in which the improvement shall be placed, R.C. 6131.14, and receive bids for the construction of the proposed improvement, R.C. 6131.22. *See also* R.C. 6131.24 (county engineer shall prepare necessary bid documents and legal advertisements); R.C. 6131.40 (review of bids by county engineer). All work on the improvement must be done under the supervision and inspection of the county engineer or a deputy appointed by him for that purpose.¹⁵ R.C. 6131.46. After work on the improvement is complete, it is reviewed by the county engineer for approval. R.C. 6131.43.

R.C. Chapter 6133 governs the construction of drainage or ditch improvements that will be located in, or will benefit or damage land in, two or more counties. R.C. 6133.02; *see also* R.C. 6133.01 (defining "improvement," for purposes of R.C. Chapter 6133, in the same manner set forth in R.C. 6131.01(C)). An engineer of a county involved in a joint county improvement pursuant to R.C. Chapter 6133 is responsible for performing the duties imposed on a county engineer by R.C. Chapter 6131 with respect to single county improvements. R.C. 6133.03. The joint board of county commissioners involved in the construction of the improvement "may designate the engineer of the county where the petition [requesting the improvement] is filed to do the field work and make the survey, plans, and estimates, but the engineer of each county interested shall assist in making the reports and schedules." R.C. 6133.08.

R.C. Chapter 6135 applies to drainage and ditch improvements that will provide drainage for land in Ohio and an adjoining state. *See* R.C. 6135.01; R.C. 6135.07. An engineer of a county involved in an improvement pursuant to R.C. Chapter 6135 is responsible for preparing a preliminary survey regarding the improvement and consulting with the proper officials from the adjoining state regarding the proposed improvement. R.C. 6135.01. If the joint board of county commissioners decides to proceed with the improvement, it shall then select a competent engineer to perform the duties assigned to a county engineer by R.C. 6131.14-15 with respect to the interstate county ditch improvement. R.C. 6135.10-12.

Accordingly, a county engineer has numerous statutory duties involving the construction of single county ditch improvements (R.C. Chapter 6131), joint county ditch improvements (R.C.

¹⁵ Under certain circumstances, a board of county commissioners may order the county engineer to complete work on an improvement under R.C. Chapter 6131 by force account. *See* R.C. 6131.44.

Chapter 6133), and interstate county ditch improvements (R.C. Chapter 6135). *See, e.g.*, R.C. 6131.09-.10; R.C. 6131.12-.15; R.C. 6131.22; R.C. 6131.44; R.C. 6133.03; R.C. 6133.08; R.C. 6135.01.

Additionally, R.C. Chapter 6137 assigns a county engineer various responsibilities with respect to the repair and maintenance of improvements constructed under R.C. Chapters 6131, 6133, and 6135. R.C. 6137.06 provides, in part:

The county engineer shall have general charge and supervision of the repair and maintenance of all county and joint county ditches, drains, watercourses, and other drainage improvements within his county constructed under [R.C. Chapters 6131, 6133, 6135 and R.C. 6137.051]. The county engineer shall make an inspection of the drainage improvements and, on or before the first day of June in each year, shall report to the board of county commissioners the condition of the drainage improvements and his estimate of the probable amount of funds required to repair and maintain them. . . .

The duties of the county engineer with respect to maintenance of any drainage improvement shall begin upon the substantial completion of the improvement.

In preparing plans and specifications for repair and maintenance of open ditches and in carrying out the plans either by contract or force account, the county engineer shall provide for necessary clearing of tree and brush growth, removal of silt bars, spreading and leveling of spoil banks, and the preservation of a sod or seeded strip as provided in the case of new construction under [R.C. 6131.14], in addition to the various phases of maintenance set forth in [R.C. 6137.05].

Thus, a county engineer is responsible for the maintenance and repair of drainage and ditch improvements constructed in his county pursuant to R.C. Chapters 6131, 6133, or 6135. *See, e.g.*, R.C. 6137.03 (county engineer must estimate benefits accruing to landowners for purposes of levying a maintenance assessment); R.C. 6137.04 (county engineer may recommend that improvements be combined into drainage maintenance districts); R.C. 6137.08 (county engineer shall inspect drainage improvements when a landowner requests a maintenance assessment reduction). When a board of county commissioners, or a joint board of county commissioners in the case of a joint county improvement, determines that an improvement is in need of maintenance or repair work, it may cause such work to be done by force account under supervision of the county engineer. R.C. 6137.05(A). If the board finds that the repair or maintenance work can be performed more economically or efficiently by contract, the board shall have the county engineer prepare proper specifications and advertise for bids. *Id.*

As you note in your request letter, a county engineer also has responsibilities regarding the proper drainage of county roads, highways, bridges, and culverts. *See, e.g.*, R.C. 5543.12; R.C. 5555.06; *see also* R.C. 5559.05. *See generally* 1981 Op. Att’y Gen. No. 81-039 (clarified by 1982 Op. Att’y Gen. No. 82-025) (discussing a county’s duty to clean and maintain ditches that run along the side of a county road or highway for drainage purposes). Other duties of a county engineer that relate to drainage include duties with respect to the removal of a milldam, R.C. Chapter 6155, and

county land reclamation, R.C. Chapter 6156. Finally, a county engineer is required to prepare certain documents with respect to drainage improvements undertaken by a county soil and water conservation district. R.C. 1515.21(F).

It is important to recognize that in some instances the duties that a county sanitary engineer may be required to perform for a county sewer district under R.C. Chapter 6117 may resemble duties a county engineer is required to perform pursuant to R.C. Chapters 6131, 6133, 6135, or 6137. Compare R.C. 6117.01(A)(3) (defining “[d]rainage facilities” for purposes of R.C. Chapter 6117), with R.C. 6131.01(C) (defining “[i]mprovement” for purposes of R.C. Chapter 6131). For example, drainage facilities of a county sewer district may include “the vacation of a ditch or drain.” R.C. 6117.01(A)(3). Similarly, an improvement under R.C. Chapters 6131, 6133, or 6135 may include “[t]he vacating of a ditch or drain.” R.C. 6131.01(C)(5); see also R.C. 6133.01. Whether duties involved with a particular project are to be performed by the county sanitary engineer or the county engineer is a question of fact that will depend upon the circumstances of the particular improvement. If the drainage or ditch work involves a county sewer district and is to be performed pursuant to R.C. Chapter 6117, the county sanitary engineer will be responsible for performing the duties assigned to a county sanitary engineer by R.C. Chapter 6117. If instead the work is to be performed pursuant to R.C. Chapters 6131, 6133, 6135, or 6137, the county engineer will be responsible for performing the duties assigned to a county engineer by those chapters.

A Board of County Commissioners may not Offer Additional Compensation to the County Engineer to perform Statutory Duties of the Office of County Engineer

Finally, you ask whether a board of county commissioners may offer additional compensation to the county engineer to perform drainage work not under R.C. Chapter 6117, but rather under R.C. 315.08 or R.C. Chapters 6131, 6133, 6135, or 6137. As explained in response to your previous question, these statutory provisions set forth duties that are within the scope of the office of county engineer. Therefore, we are of the opinion that Article II, § 20 of the Ohio Constitution and R.C. 325.14 prohibit a board of county commissioners from offering additional compensation to the county engineer for performing such duties.

Article II, § 20 of the Ohio Constitution declares that “[t]he General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.” A county engineer is a public officer for purposes of Article II, § 20 of the Ohio Constitution. *State ex rel. Mikus v. Roberts*, 15 Ohio St. 2d 253, 239 N.E.2d 660 (1968) (syllabus, paragraph 2); 2013 Op. Att’y Gen. No. 2013-011, at 2-99. Accordingly, the General Assembly is required to fix the compensation of a county engineer and has done so in R.C. 325.14. See also R.C. 325.18. Because Article II, § 20 of the Ohio Constitution specifies that the compensation of a county engineer is to be fixed by the General Assembly, a board of county commissioners may not alter that compensation by offering additional compensation to the county engineer.

Further, Article II, § 20 of the Ohio Constitution specifically prohibits any change, whether an increase or decrease, in a county engineer’s compensation during an existing term of office. This

prohibition is premised on the concept that “[a] person enters an office, to which a fixed salary is attached, with the understanding that he is to perform, at that same salary, not only those duties currently prescribed but all duties which may subsequently arise within the scope of that office.” 1980 Op. Att’y Gen. No. 80-073, at 2-293. Because R.C. 315.08 and R.C. Chapters 6131, 6133, 6135, and 6137 assign duties that are within the scope of the office of county engineer, Article II, § 20 prohibits a county engineer from receiving additional compensation for performing those duties.¹⁶

Accordingly, we are of the opinion that Article II, § 20 of the Ohio Constitution and R.C. 325.14 prohibit a board of county commissioners from offering additional compensation to the county engineer for performing duties under R.C. 315.08 or R.C. Chapters 6131, 6133, 6135, or 6137.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. When a board of county commissioners proposes to enter into an agreement with the county engineer pursuant to R.C. 315.14, it must offer to pay reasonable compensation to the county engineer for performance of duties under the agreement.
2. The statutory duties of a county sanitary engineer are set forth almost exclusively in R.C. Chapters 343 (solid waste management districts), 6103 (county water supply systems), and 6117 (county sewer districts). Of these chapters, only R.C. Chapter 6117 expressly assigns duties related to ditches to a county sanitary engineer.
3. R.C. 6117.01(B)(1) describes a board of county commissioners’ authority to acquire, construct, maintain, and operate drainage facilities for a county sewer district, but does not limit the drainage facilities duties that a county sanitary engineer may be required to perform under R.C. Chapter 6117. A county sanitary engineer must perform, as necessary, each duty imposed upon the position of county sanitary engineer by R.C. Chapter 6117.
4. A county engineer is required to perform the statutory duties set forth in R.C. 315.08 regardless of whether the county engineer has entered into an agreement with the board of county commissioners pursuant to R.C. 315.14.

¹⁶ For an explanation of why Article II, § 20 of the Ohio Constitution is not violated when a county engineer receives additional compensation for performing duties of the county sanitary engineer pursuant to an agreement under R.C. 315.14, see 2013 Op. Att’y Gen. No. 2013-016, at 2-143 to 2-148.

5. A county engineer has numerous statutory duties related to drainage and ditches, including, but not limited to, those set forth in R.C. Chapters 6131 (single county ditches), 6133 (joint county ditches), 6135 (interstate county ditches), and 6137 (ditch maintenance fund). Pursuant to R.C. 6137.06, a county engineer has “general charge and supervision of the repair and maintenance of all county and joint county ditches, drains, watercourses, and other drainage improvements within his county constructed under” R.C. Chapters 6131, 6133, 6135, and R.C. 6137.051.
6. Article II, § 20 of the Ohio Constitution and R.C. 325.14 prohibit a board of county commissioners from offering additional compensation to the county engineer for performing duties under R.C. 315.08 or R.C. Chapters 6131, 6133, 6135, or 6137.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE
Ohio Attorney General