March 14, 2007

The Honorable Roger D. Nagel
Fulton County Prosecuting Attorney
123 Courthouse Plaza
Wauseon, Ohio 43567

SYLLABUS: 2007-003

Under R.C. 3501.12(E), the dollar amounts used to compute the compensation payable to board of elections members in calendar year 2004 and subsequent years are the same dollar amounts used to compute the compensation payable in calendar year 2003, with no additional percentage increases granted for years subsequent to calendar year 2003.

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OPINION NO. 2007-003

The Honorable Roger D. Nagel
Fulton County Prosecuting Attorney
123 Courthouse Plaza
Wauseon, Ohio 43567

Dear Prosecutor Nagel:

You have requested an opinion regarding the compensation to be paid to a member of the Fulton County Board of Elections. Your request concerns the interpretation of R.C. 3501.12, which provides for annual increases in the compensation of board of elections members in calendar years 2001 and 2002 and then states, in division (E), that, "[i]n calendar year 2003 and thereafter," the annual compensation "shall be computed after increasing by three per cent" the dollar amounts used to compute the compensation for calendar year 2002. The question is whether the amounts used to compute compensation continue to increase by three per cent each year following 2003, or whether they are frozen at the rates established for calendar year 2003.

For the reasons set forth below, we conclude that, under R.C. 3501.12(E), the dollar amounts used to compute the compensation payable to board of elections members in calendar year 2004 and subsequent years are the same dollar amounts used to compute the compensation payable in calendar year 2003, with no additional percentage increases granted for years subsequent to calendar year 2003.

Compensation of Board of Elections Members under R.C. 3501.12

Each county in Ohio has a board of elections consisting of four members appointed by the Secretary of State and paid from the county treasury. R.C. 3501.06; R.C. 3501.12; R.C. 3501.17. Under R.C. 3501.12, the compensation of the members of the county board of elections is determined on the basis of the population of the county according to the next preceding federal census.

The compensation of a member of a board of elections is computed as a certain number of dollars for each specified increment of population.[1] The dollar figures prescribed in division (A) of R.C. 3501.12 are as follows: $85.00 for each full 1,000 of the first 100,000 population; $40.50 for each full 1,000 of the second 100,000 population; $22.00 for each full 1,000 of the third 100,000 population; and $6.75 for each full 1,000 above 300,000 population. R.C. 3501.12(A). The minimum annual salary is $3,375 and the maximum annual salary is $20,000, subject to certain exceptions. R.C. 3501.12(B).

Other divisions of R.C. 3501.12 provide for annual increases in the dollar figures prescribed in division (A). These increases are as follows:

> (C) In calendar year 2001, the annual compensation of each member of the board shall be computed after increasing the dollar amounts specified in divisions (A) and (B) of this section by three per cent.
>
> (D) In calendar year 2002, the annual compensation of each member of the board shall be computed after increasing by three per cent the dollar amounts used to compute the compensation of a member under division (C) of this section.
>
> (E) *In calendar year 2003 and thereafter,* the *annual compensation* of each member of the board *shall be computed after increasing by three per cent the dollar amounts used to compute the compensation of a member under division (D) of this section.*

R.C. 3501.12 (emphasis added).

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[1] R.C. 3501.12 states, in relevant part:

> (A) Except as provided in divisions (B) and (C) of this section, the amount of annual compensation of members of the board shall be as follows:
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> (1) Eighty-five dollars for each full one thousand of the first one hundred thousand population;
>
> (2) Forty dollars and fifty cents for each full one thousand of the second one hundred thousand population;
>
> (3) Twenty-two dollars for each full one thousand of the third one hundred thousand population;
>
> (4) Six dollars and seventy-five cents for each full one thousand above three hundred thousand population.
>
> (B) Except as provided in division (C) of this section, the compensation of a member of the board shall not be less than three thousand three hundred seventy-five dollars and shall not exceed twenty thousand dollars annually.

Divisions (C), (D), and (E) of R.C. 3501.12 thus establish a compounding method to be used to provide an annual increase of three per cent in the amounts used to compute the compensation for board of elections members for calendar years 2001, 2002, and 2003. The matter here at issue is whether division (E), through its reference to "thereafter," provides for a similar increase in each year subsequent to 2003, or whether it simply fixes the 2003 calendar year amounts as the amounts applicable to those subsequent years.

Language and History of R.C. 3501.12

A straightforward reading of the language of R.C. 3501.12 indicates that the reference to "calendar year 2003 and thereafter" fixes the 2003 calendar year compensation amounts and makes them applicable also to calendar years subsequent to 2003. Division (E) uses the word "thereafter" to refer to compensation payable in years subsequent to 2003. It describes this compensation as being computed "after increasing by three per cent the dollar amounts used to compute the compensation of a member under division (D)," with division (D) setting forth the dollar amounts for calendar year 2002. There is no provision in R.C. 3501.12 for increasing the amounts used to compute the compensation for 2003 or subsequent years. Hence, the language of R.C. 3501.12(E) supports the conclusion that the dollar amounts used to compute the compensation of board of elections members are currently frozen at the figures established for calendar year 2003.

The fact that your county board of elections has asked about the proper construction of R.C. 3501.12(E) indicates, however, that there is some ambiguity in the language of R.C. 3501.12(E). At best, the language of R.C. 3501.12(E) is confusing. This confusion results, at least in part, from the complicated manner in which the compensation of a board of elections member is computed. The fact that the compensation must be computed on an annual basis raises the question whether division (E) calls for a three per cent increase in the dollar amounts used in that computation in each year subsequent to 2003. To evaluate this possibility, we consider the history, purpose, and circumstances of the enactment of R.C. 3501.12(E). *See* R.C. 1.49 (if a statute is ambiguous, a court may consider, among other matters, the object sought to be attained, the circumstances under which the statute was enacted, the legislative history, the former statutory provisions, and the consequences of a particular construction); *Meeks v. Papadopulos*, 62 Ohio St. 2d 187, 190-91, 404 N.E.2d 159 (1980).

R.C. 3501.12 was most recently amended in Sub. H.B. 712, which enacted the compensation increases effective beginning in calendar year 2001. *See* 1999-2000 Ohio Laws, Part IV, 7756, 7811, 7817 (Sub. H.B. 712, eff. Dec. 8, 2000, with amendments to R.C. 3501.12 first applicable in calendar year 2001). In describing the compensation increases granted to board of elections members by Sub. H.B. 712, the Ohio Legislative Service Commission stated:

> Current law determines the annual compensation of members of a board of elections on the basis of the population of the county. The bill sets the annual compensation levels at $85 for each full 1,000 of the first 100,000 population, $40.50 for each full 1,000 of the second 100,000 population, $22 for each full

> 1,000 of the third 100,000 population, and $6.75 for each full 1,000 above 300,000 population. The bill also raises the minimum annual salary of a member of the board to $3,375 from $3,000 and the cap on the maximum annual salary to $20,000 from $15,000. Finally, *the bill provides for the dollar amounts used to determine the salaries, and minimum and maximum salaries, to increase from 2001 through 2003 by 3% each year*.

Ohio Legislative Service Comm'n, 123-HB 712 LSC Analysis, at 14 (as reported by S. Finance & Financial Institutions) (emphasis added); *see also* Ohio Legislative Service Comm'n, 123-HB 712 LSC Analysis, at 1-2 (as reported by S. Finance & Financial Institutions) (Sub. H.B. 712 "[i]ncreases the annual salaries of members of boards of elections by 3% each year from 2001 through 2003").

Although the legislative analyses prepared by the Ohio Legislative Service Commission do not have the force and effect of law, they may provide useful insights into the interpretation of the legislation they address. *See Meeks v. Papadopulos*, 62 Ohio St. 2d at 191 ("[a]lthough this court is not bound by such analyses, we may refer to them when we find them helpful and objective"); *Weiss v. Porterfield*, 27 Ohio St. 2d 117, 120, 271 N.E.2d 792 (1971) (while not decisive, interpretations by the Legislative Service Commission provide evidence of legislative intent); 2006 Op. Att'y Gen. No. 2006-030, at 2-288. The Legislative Service Commission's description of the effect of Sub. H.B. 712 upon the compensation of a member of a board of elections clearly reflects a legislative intent to provide percentage increases in 2001, 2002, and 2003, and not in subsequent years. *See Miller v. Fairley*, 141 Ohio St. 327, 48 N.E.2d 217 (1943) (syllabus, paragraph 2) ("[s]tatutes are to be read in the light of attendant circumstances and conditions, and are to be construed as they were intended to be understood, when they were passed").

This interpretation of R.C. 3501.12 is consistent with earlier statutory provisions. Before R.C. 3501.12 was amended by Sub. H.B. 712, it contained language similar to the current language of R.C. 3501.12(E), stating, in part: "In calendar year 2000 and thereafter, the annual compensation of each member of the board shall be computed after increasing by three per cent the amounts used to compute the compensation of a member" for calendar year 1999. *See* 1999-2000 Ohio Laws, Part IV, 7812. If this language had been sufficient to provide a three per cent increase for years subsequent to 2000, it would not have been necessary for the General Assembly to adopt the amendments to R.C. 3501.12 set forth in Sub. H.B. 712 to increase the members' compensation in calendar years 2001 through 2003.

Further, it is instructive to note that Sub. H.B. 712 enacted compensation increases for various public officials other than members of boards of elections.[2] The years for which

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[2] Although R.C. 3501.12 has not been changed since its amendment in Sub. H.B. 712, *see* 1999-2000 Ohio Laws, Part IV, 7756, 7811 (Sub. H.B. 712, eff. Dec. 8, 2000, with amendments

increases were granted differed among the public officials, with officials other than board of elections members receiving increases through 2008. *See* 1999-2000 Ohio Laws, Part IV, 7757-70, 7797-7802 (Sub. H.B. 712, amending, *inter alia*, R.C. 101.27 (compensation increases for members of the General Assembly through 2008), R.C. 141.011 (compensation increases for elective officers of the state through 2008), R.C. 141.04 (compensation increases for justices and judges through 2008), R.C. 325.18 (compensation increases for elective county officers through 2008), R.C. 505.24 (compensation increases for township trustees through 2008), R.C. 507.09 (compensation increases for township clerks through 2008)). In each case, however, the legislation specifically identified the years for which an increase was granted.[3]

Throughout Sub. H.B. 712 the word "thereafter" was used to indicate that the amount of compensation established for the latest year specifically mentioned – as increased under the legislation – was to be paid in subsequent years. For example, R.C. 505.24(B)(6), as amended in

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to R.C. 3501.12 first applicable in calendar year 2001), several of the other compensation provisions amended or enacted in Sub. H.B. 712 have subsequently been amended. This opinion does not address all the subsequent changes made to those compensation provisions. Rather, this opinion discusses provisions set forth in Sub. H.B. 712 in the form in which they appear in Sub. H.B. 712, using that language to aid in the construction of R.C. 3501.12, as amended in Sub. H.B. 712 and currently in effect.

[3] Members of boards of elections were not granted annual increases each year through 2008, as were other officials named in Sub. H.B. 712. However, this distinction is clearly addressed in the statutory language, which reflects the decision of the General Assembly to treat different groups of officials differently. *See, e.g., Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 49, 442 N.E.2d 1278 (1982) (General Assembly may exercise legislative judgment to establish reasonable distinctions between different classifications). In addition to the differences in the number of years in which increases were granted, there were some differences in the amounts of the increases. Certain of the increases granted to officials other than members of a board of elections were increases in the amount of the lesser of three per cent or the percentage increase, if any, in the consumer price index over the twelve-month period ending on the thirtieth day of September of the immediately preceding year, rounded to the nearest one-tenth of one per cent, and, thus, were apparently intended to be cost of living increases with a three per cent cap. *See* 1999-2000 Ohio Laws, Part IV, 7756, 7759-65, 7769-7770, 7797-7802 (Sub. H.B. 712, amending, *inter alia*, R.C. 101.27(B) (members of the General Assembly), R.C. 141.011 (elective officers of the state), R.C. 141.04 (justices and judges), R.C. 325.18 (county elective officers), R.C. 505.24 and 507.09 (township trustees and township clerks were granted increases of three per cent in calendar years 1999, 2000, 2001, and 2002 and increases of the lesser of three per cent or the increase in the consumer price index in calendar years 2003 through 2008)). In contrast, under R.C. 3501.12(C), (D), and (E), the members of boards of elections were granted a three per cent increase in each of the three years in which they were granted an increase, even if the consumer price index rose less than three per cent.

Sub. H.B. 712, described the compensation of a township trustee to be "[i]n calendar year 2009 and thereafter, the amount determined under division (B) of this section for calendar year 2008." 1999-2000 Ohio Laws, Part IV, 7799-7800. Similar language was used in R.C. 507.09(D)(6) (now R.C. 507.09(D)(8)) to establish the compensation of township clerks. 1999-2000 Ohio Laws, Part IV, 7801-7802. Slightly more complicated language amended R.C. 141.011(A) to state, in part: "(4) In calendar year 2008 and thereafter, the annual salary of the governor shall be the annual salary in 2007 increased by the lesser of" three per cent or "[t]he percentage increase, if any, in the consumer price index from October 1, 2006, to September 30, 2007, rounded to the nearest one-tenth of one per cent." 1999-2000 Ohio Laws, Part IV, 7762; *see also* 1999-2000 Ohio Laws, Part IV, 7763 (salary of lieutenant governor). In each case, "thereafter" was used to set the compensation at the same amount as in a stated previous year. In no case was provision made for an indefinite number of annual increases extending into the unlimited future.

It is appropriate to give "thereafter" this interpretation and application also in R.C. 3501.12(E). *See State v. Van Gunten*, 84 Ohio St. 172, 175, 95 N.E. 664 (1911) (all provisions of a statute must be construed together, and "[w]e must endeavor to get at the legislative intent by a consideration of all that has been said in the law"); *Rhodes v. Weldy*, 46 Ohio St. 234, 20 N.E. 461 (1889) (syllabus, paragraph 2) ("[w]here the same word or phrase is used more than once in the same act in relation to the same subject-matter and looking to the same general purpose, if in one connection its meaning is clear and in another it is otherwise doubtful or obscure, it is in the latter case to receive the same construction as in the former, unless there is something in the connection in which it is employed, plainly calling for a different construction"); 1998 Op. Att'y Gen. No. 98-036, at 2-215. Reading the various compensation provisions of Sub. H.B. 712 in a consistent manner, we construe R.C. 3501.12(E) as providing annual increases only for the years expressly mentioned – namely, 2001, 2002, and 2003 – and as maintaining "thereafter" the compensation as so increased, with no subsequent annual increases.[4]

It is a basic principle of Ohio law that public moneys are held in trust for the public and may be expended only by clear authority of law. *See State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1). Hence, if there is any doubt as to the authority to make an expenditure, the doubt must be resolved against the expenditure. *See State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916). There is no basis for construing a statute to provide for annual increases in compensation for an indefinite period of time unless the statutory language clearly so provides. *See State v. McKelvey*, 12 Ohio St. 2d 92, 94, 232 N.E.2d 391 (1967) (all measures providing for the expenditure of public funds are to be strictly construed). As discussed above, the language of R.C. 3501.12(E) supports a construction that

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[4] This opinion interprets and applies existing statutory provisions governing compensation of board of elections members. The authority to modify those provisions rests with the General Assembly. *See Bd. of Educ. v. Fulton County Budget Comm'n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975); 2004 Op. Att'y Gen. No. 2004-047, at 2-413.

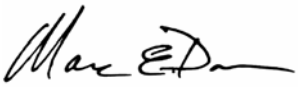
limits the increases in compensation to the years expressly named. *See* 2006 Op. Att'y Gen. No. 2006-052, at 2-526 ("[a] county employer has an obligation to expend public funds in accordance with law and to protect the public treasury by ensuring that each employee is paid only the amount to which that employee is entitled").

We find, therefore, that the intent of R.C. 3501.12 was to provide for increases in compensation for board of elections members in calendar years 2001, 2002, and 2003, and to provide for the amount of compensation as so increased to be paid in subsequent years without additional increases. R.C. 3501.12(E) fixes the dollar amounts used to compute compensation payable to a member of a county board of elections for calendar year 2003 at figures that include an increase of three per cent over the dollar amounts used to compute the compensation payable in calendar year 2002. These same dollar amounts are used to compute the amount of compensation payable in calendar year 2004 and subsequent years, and no additional annual increases in compensation are authorized for years subsequent to calendar year 2003.

Conclusion

For the reasons set forth above, it is my opinion, and you are hereby advised, that under R.C. 3501.12(E), the dollar amounts used to compute the compensation payable to board of elections members in calendar year 2004 and subsequent years are the same dollar amounts used to compute the compensation payable in calendar year 2003, with no additional percentage increases granted for years subsequent to calendar year 2003.

Respectfully,



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