

1035.

BONDS—CITY OF CLEVELAND, CUYAHOGA COUNTY, \$1,000.

COLUMBUS, OHIO, August 11, 1939.

*Retirement Board, School Employes Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of the City of Cleveland, Cuyahoga County,  
\$1,000.

The above purchase of bonds appears to be part of a \$670,000 issue of refunding bonds of the above city dated September 1, 1938. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission of Ohio under date of September 17, 1938, being Opinion No. 2986.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1036.

COUNTY BOARD OF ELECTIONS — DUTY TO PROVIDE PLACES FOR REGISTRATION — ALL PRECINCTS IN COUNTY INCLUDING TOWNSHIPS — PRIMARY — ELECTION—WHERE POLLING PLACES IN PRIVATE BUILDINGS, LOCAL BOARD OF ELECTIONS DETERMINES AMOUNT OF RENTAL — SUCH EXPENSE PAID FROM COUNTY TREASURY — APPROPRIATIONS BY COUNTY COMMISSIONERS—PROCEDURE, CHARGES, NEXT TAX SETTLEMENT.

## SYLLABUS:

1. *It is the duty of the county board of elections to fix and provide places for registration, when required, and for holding primaries and elections, in all precincts in such county, including those located in townships.*

2. *When polling places are established in private buildings, the amount of rental to be paid shall be determined by the local board of elections.*

3. *The expenses of a board of elections of a county for rental of polling places shall be paid in all instances from the county treasury in*

*pursuance of appropriations by the county commissioners upon vouchers of the board of elections certified to by its chairman or acting chairman and its clerk or deputy clerk, upon warrants of the county auditor; and the moneys so expended for a political subdivision within a county shall be charged back to such subdivision for (a) primaries and elections in odd numbered years, (b) all special elections, and (c) conducting registration within such subdivision, when required, and the amount so charged shall be withheld by the county auditor from the moneys payable thereto at the next tax settlement.*

COLUMBUS, OHIO, August 14, 1939.

HON. MELTON BOYD, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion on the following:

“Will you kindly give me your opinion on whether the County Board of Elections or the Board of Township Trustees have authority to determine the polling places for precincts within a township, considering Sections 3260 and 4785, General Code.

Further, when rent is to be paid, who is authorized to determine the rent, pay the rent and out of what fund is said rent to be paid?”

The Secretary of State, by virtue of section 4785-6, General Code, is designated chief election officer of the state. One of the duties imposed on him as such officer is to appoint all members of the county boards of elections in the manner provided by law. The duties of such local boards are contained in section 4785-13, General Code, which provides in part as follows:

“The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this act, and shall perform all the duties imposed by law which shall include the following:

\* \* \*

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\* \* \*

b. To fix and provide the places for registration, when required, and for holding primaries and elections.”

The language of the above quoted section is very clear and unambiguous to the effect that the power and duty to fix the location of polling places within a county rests with each county board of elections.

Section 3260, General Code, reads in part as follows :

“The trustees shall fix the place of holding elections within their township, or of any election precinct thereof.”

A cursory examination of the two statutes set forth above readily reveals a conflict in connection with the placing of polling places within a township; the former imposing the duty on the local board of elections and the latter placing such determination in the hands of the local board of township trustees. In view of this conflict, you seek my opinion as to which of the two boards possesses the statutory authority to make the determination in question.

In attempting to reconcile conflicting statutes, the familiar doctrine of repeal by implication is often resorted to. In connection with this doctrine, we note the following in 37 O. Jur., page 395 :

“The repeal of a statute is implied when the intention to repeal is inferred from subsequent repugnant legislation. Such an implied repeal is as broad and thorough as if made in express words.”

At page 400 of the said authority, it is said that :

“The doctrine of repeal by implication rests on the ground that the last expression of the legislative will ought to control. It results from the necessity of giving effect to the later legislation.”

Similar observations are contained in Sutherland Statutory Construction, at page 179 :

“Such repeals (by implication) are recognized as intended by the legislature, and its intention to repeal is ascertained as the legislative intent is ascertained in other respects, when not expressly declared, by construction. An implied repeal results from some enactment the terms and necessary operation of which cannot be harmonized with the terms and necessary effect of an earlier act. In such case the later law prevails as the last expression of the legislative will; therefore, the former law is constructively repealed, since it cannot be supposed that the law-making power intends to enact or continue in force laws which are contradictions. The repugnancy being ascertained, the later act or provision in date or position has full force, and displaces by repeal whatever in the precedent law is inconsistent with it.

Subsequent legislation repeals previous inconsistent legisla-

tion whether it expressly declares such repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions cannot stand together. The intention to repeal, however, will not be presumed, nor the effect of repeal admitted, unless the inconsistency is unavoidable, and only to the extent of the repugnance." (Words in parenthesis the writer's.)

In the case of *Goff, et al., v. Gates, et al.*, 87 O. S. 142, the Supreme Court of Ohio took cognizance of this doctrine as evidenced by the first branch of the syllabus, which reads as follows:

"An act of the legislature that fails to repeal in terms an existing statute on the same subject-matter must be held to repeal the former statute by implication if the later act is in direct conflict with the former, or if the subsequent act revises the whole subject-matter of the former act and is evidently intended as a substitute for it."

See also *State, ex rel. Crabbe, v. City of Cleveland*, 115 O. S. 484, and *Rogers, et al., v. State, ex rel. Lucas*, 129 O. S. 108.

Section 3260, *supra*, has been on our statute books in its present form since 1853. Section 4785-13, subsection b, *supra*, was enacted in 1929, effective January 1, 1930, when the 88th General Assembly revised and recodified the election laws of Ohio to the end of enacting an election code which would bring about uniformity and efficiency in the conduct of elections, and it appears clear that it was the legislative intent that all election matters should be under the supervision of the Secretary of State and his duly appointed agents, the members of the several boards of election.

The provisions of section 4785-13, subsection b, *supra*, and section 3260, *supra*, are irreconcilable and in line with the authority above noted, it is therefore my opinion that section 3260, *supra*, to the extent it requires local boards of township trustees to fix polling places, was repealed by implication by the enactment of section 4785-13, subsection b, *supra*.

In view of the foregoing, and in specific answer to your first question, I am of the opinion that it is the duty of the county board of elections to fix and provide places for registration, when required, and for holding primaries and elections, in all precincts in such county, including those located in townships.

Your second question is concerned with the renting of polling places for election purposes. In connection therewith, I direct your attention to the following sections of the General Code from which I feel an adequate answer may be afforded:

*Section 4785-13.*

“The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this act, and shall perform all the duties imposed by law which shall include the following:

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\* \* \*

\* \* \*

c. To prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year.”

*Section 4785-117.*

“\* \* \* When polling places are established in private buildings the board shall allow only a reasonable rental therefor. \* \* \*”

*Section 4785-20.*

“The expenses of the board in each county shall be paid from the county treasury, in pursuance of appropriations by the county commissioners, in the same manner as other expenses are paid. If the county commissioners fail to appropriate an amount sufficient to provide for the necessary and proper expenses of the board, the board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. Payments shall be made upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor. The board of elections shall not incur any obligation involving the expenditure of money unless there are monies sufficient in the funds appropriated therefor to meet such obligations. Such expenses shall be apportioned among the county and the various subdivisions as hereinafter provided, and the amount chargeable to each subdivision shall be withheld by the county auditor from the monies payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year the board shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year.

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b. The compensation of judges and clerks of elections; the cost of renting, moving, heating and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof; the cost of printing and delivering ballots, cards of instruction and other election supplies; and all other expenses of conducting primaries and elections in the odd numbered years

shall be charged to the subdivisions in and for which such primaries or elections are held.

c. The cost of all special elections shall be charged against the subdivisions for and in which such elections are held.

d. The compensation of registrars; the cost of renting, heating and lighting registration places; the cost of the necessary books, forms and supplies from the conduct of registration; and the cost of printing and posting precinct registration lists, shall be charged to the subdivision in which such registration is held."

As above pointed out, the county board of elections is required to prepare and submit to the board of county commissioners a budget estimating the cost of elections for the ensuing fiscal year. In certain instances it is necessary for a board of elections to rent private buildings for use as a polling place at an election. The amount of rental which may be paid must be determined by the board of elections in the exercise of its sound discretion and paid in the same manner as other election expenses are met. The manner of payment is contained in section 4785-20, supra. By its express terms, all election expenses of each county board of elections are paid from the respective county treasuries pursuant to appropriations by the board of county commissioners. Payments must be made upon vouchers of the board of elections certified to by its chairman or acting chairman and its clerk or deputy clerk upon warrants of the county auditor. In odd numbered years the cost of renting polling places for primaries and elections are charged back to the local subdivision in which such primaries and elections are held and such cost is withheld by the county auditor from the moneys payable to such subdivision at the time of the next tax settlement. There being no provision for charging such expenses in the even numbered years, it would follow that they must be met out of the county treasury from the funds therein appropriated for election expenses without any reimbursement from the local subdivision.

The rental of polling places for special elections being a proper election expense in like manner is payable in the first instance from the county treasury upon issuance of the proper voucher and warrant, and by the express terms of section 4785-20, subsection c, supra, such expense is charged back against the political subdivision in which such special elections are conducted. In those cases, as explained above, it is the duty of the county auditor to withhold from such subdivision at the next tax settlement the amount so charged back.

The cost incurred by renting registration places at which qualified citizens of a political subdivision are afforded an opportunity to register is likewise charged back to that subdivision in which such registration is held.

In accord with what has been said above, I am therefore of the

opinion that (1) the expenses of a board of elections of a county for rental of polling places shall be paid in all instances from the county treasury in pursuance of appropriations by the county commissioners upon vouchers of the board of elections certified to by its chairman or acting chairman and its clerk or deputy clerk, upon warrants of the county auditor; and (2) the moneys so expended for a political subdivision within a county shall be charged back to such subdivision for (a) primaries and elections in odd numbered years, (b) all special elections, and (c) conducting registration within such subdivision, when required, and the amount so charged shall be withheld by the county auditor from the moneys payable thereto at the next tax settlement.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1037.

BUILDING AND LOAN ASSOCIATION, STATE CHARTERED—  
WHERE IT HAS OBTAINED INSURANCE OF ACCOUNTS  
—NATIONAL HOUSING ACT—FIDUCIARY MAY INVEST  
SUCH FUNDS BELONGING TO TRUST IN SHARES OR  
CERTIFICATES OR OTHER EVIDENCES OF DEPOSIT—  
WHERE SUCH ASSOCIATION HAS NO INSURANCE OF  
ACCOUNTS—FIDUCIARY REQUIRED TO SECURE AP-  
PROVAL OF PROBATE COURT IN RE INVESTMENT—  
AMOUNT INVESTED SHALL NOT EXCEED \$5,000.00.

**SYLLABUS:**

1. *Under the terms of Section 10506-41, General Code, as amended by the 93rd General Assembly, a fiduciary may invest such funds belonging to his trust, as are to be invested, in shares and certificates or other evidences of deposit issued by a State chartered building and loan association organized under the laws of the State of Ohio, which has obtained insurance of accounts as provided in Title 4 of the National Housing Act of 1934 and amendments thereto; but where such State chartered building and loan association organized under the laws of the State of Ohio has no insurance of accounts, the fiduciary may invest such funds in shares or certificates of such association, provided he secures the approval of the Probate Court to make the investment.*

2. *The amount which may be invested in such shares, certificates, or*