

improvement. Section 1214 G. C. provides authority in the board of county commissioners to increase the share of the cost and expense to be paid by the property owners and to extend this to property owners owning property within one-half mile on either side of an improvement or within one mile of either side of the improvement. I do not note anything in the statute, however, authorizing the board of county commissioners to extend its assessments to property lying within one and one-half miles of the improvement as contemplated by the board of county commissioners in this case.

For the reasons first above noted herein said issue of bonds is disapproved and you are advised not to purchase the same.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

2488.

ELECTIONS—EMPLOYMENT OF ASSISTANT TO DEPUTY STATE SUPERVISORS OF ELECTIONS, IN COUNTY IN WHICH THERE IS NO REGISTRATION CITY NOT PROPER AND NECESSARY EXPENSE—WHEN SERVICES OF PART TIME ASSISTANT MAY BE NECESSARY EXPENSE—CONCURRENCE OF BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS AND COUNTY COMMISSIONERS NECESSARY.

*The employment by the year of an assistant to the board of deputy state supervisors of elections, in a county in which there is no registration city, is not a proper and necessary expense within the meaning of section 4821 G. C.*

*Services of a part time assistant may be a proper and necessary expense, depending upon the judgment of the board of deputy state supervisors of elections to initiate, and that of the county commissioners to approve and pay for, and the commissioners may refuse to pay, pay in part or in full any such claim, as their discretion and good judgment dictate.*

*In creating and paying for any proper and necessary expense in the conduct of elections under section 4821 G. C., the joint concurrence of the good judgment and discretion of the board of deputy state supervisors of elections and of the county commissioners is necessary.*

COLUMBUS, OHIO, October 18, 1921.

HON. LLOYD S. LEECH, *Prosecuting Attorney, Coshocton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter reading:

“The deputy state supervisors of elections of Coshocton county, on the 18th day of July, 1921, employed an assistant clerk to help take care of the work of the election board and fixed her salary at sixty dollars per month. This was done by the election officials without consulting the board of county commissioners, and the bill for her services was then presented to the board of county commissioners, which said board refused to approve and allow the same. Whereupon, the question of the legality of the expenditure of said money was submitted to me and I have informed both boards that I am of the opinion that the bill would be a proper one to allow if the additional services were necessary, but that under the law I was of the

opinion that the board of commissioners before allowing the claim, should determine whether or not the expenditure of money for such purpose was a necessary expenditure, and if so, then the board of commissioners should determine as to what was a reasonable amount to be paid for said services.

Both of said boards are desirous of having an opinion from your office concerning this matter, so that they may know which board shall determine what assistants shall be secured for the election officials and the amount of compensation therefor.

I am enclosing herewith the communication directed to me by the election officials covering their contentions in regard to this matter."

Accompanying this letter was one received by you from the board of deputy state supervisors of elections of your county, asking to be advised on certain questions which were set out at length therein, but are here omitted. The questions presented for discussion by your letter may be stated as follows:

- (1) Is the employment of an assistant to the board of deputy state supervisors of elections by the month, for the year round, a proper and necessary expense in a county in which there is no registration city?
- (2) How shall expenses that are proper and necessary under section 4821 G. C. be incurred and paid?

It is noticed that the letter to you from the board of deputy state supervisors of elections says an assistant for part time had been employed in the years 1918, 1919, and 1920. It seems that the employment of this girl as assistant was intended to be for full time at sixty dollars per month, although a claim for salary due her for the period of three weeks from July 18 to August 6 for sixty dollars was presented to the county commissioners for payment and was refused by them. This seems to have been the first claim presented to the commissioners for payment. The report of the state examiner of the bureau of inspection and supervision of public offices who made the examination of your county, also enclosed in your letter, shows that continuous employment was contemplated for this assistant by the board of deputy state supervisors of elections. Upon such a set of facts the questions you ask arise.

Section 4821 G. C. reads:

"All proper and necessary expenses of the board of deputy state supervisors shall be paid from the county treasury as other county expenses, and the county commissioners shall make the necessary levy to provide therefor. In counties containing annual general registration cities, such expenses shall include expenses duly authorized and incurred in the investigation and prosecution of offenses against laws relating to the registration of electors, the right of suffrage and the conduct of elections."

This section provides that "all proper and necessary expenses \* \* \* shall be paid \* \* \* as other county expenses \* \* \*."

It is provided in section 2460 G. C. that

"No claims against the county shall be paid otherwise than upon

the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."

The law as found in section 4821 G. C. has it that all proper and necessary expenses of the board of deputy state supervisors of elections shall be paid as other claims against the county are paid. In every county many proper expenses may not be necessary and some necessary expenses may not be proper ones for all counties. It is not possible to prepare a catalogue of all proper expenses, and, if such a list were within the realm of the probable, not to say possible, not all such expenses would be necessary ones. Many such are unnecessary. This condition obtains in all offices and business pursuits. The elimination of proper expenses that are unnecessary marks the difference between the efficient and economic administration of affairs and inefficiency and waste. It is here the law wisely expects and permits the discretion and good judgment of boards and officers to be exercised. That is the case in the instant matter.

Section 2460 G. C. puts over and around the public purse the county commissioners' discretion and good judgment when it provides that "no claim shall be paid otherwise than upon allowance" by them. It is also a presumption of the law that discretion and good judgment will be exercised by the board of deputy state supervisors of elections in keeping within expenses that are proper and necessary, as it will do if it expects that concurrence of judgment in the county commissioners which will induce these commissioners to pay the bills thus incurred. Team work is expected because an action to direct and control the discretion of the commissioners in payment or refusal to pay a claim presented will be assumed by a court of law only when there is apparent gross mismanagement, capricious conduct, penchant partiality, fraud or collusion.

As a precedent the board of deputy state supervisors of elections in their argument advanced the statement that a part time assistant was employed in 1918, etc., to take care of the work entailed under section 5078-1 G. C., which section is the absent voter's law. The services of such assistant during the years when, on account of the war, so many voters were absent from home, may have been proper and necessary. Since then the volume of work on account of absent voters has materially decreased, and it may or may not at this time impose so great an amount of work as to require extra help. But, to say the most, such extra help could scarcely be said to be required for a longer period than the month during which such absent voters may exercise the privilege that the law affords them in casting their ballots. The board of deputy state supervisors of elections cannot pay an assistant; that depends upon the action of the county commissioners. The county commissioners by their own action cannot order the expense of an assistant for the board of deputy state supervisors of elections. A joint action of the board of deputy state supervisors of elections and the county commissioners is necessary to comply with the statute in creating a proper and necessary ex-

pense and paying for it. Determination of the whole matter is within the discretion of the board of deputy state supervisors of elections to initiate, and the concurrence of that of the county commissioners to complete.

The board of deputy state supervisors of elections cites in its argument *State vs. Craig*, 11 O. C. D. 557, and seems to rely upon that case for support in its action. That is a case in which injunction is sought to restrain the auditor from issuing his warrant to pay for the services of an assistant to the deputy state supervisors of elections. The auditor answers admitting that unless restrained he will issue said warrant to pay said claim. To the answer a general demurrer is interposed. The court says:

“There is no claim here that the amount to be paid is fixed by law. Nor is there any allegation that the same has been allowed by the county commissioners; neither is there any law which authorizes any person or tribunal to fix the amount of such compensation.”

In other words, the court points out that the claim is not one that comes within the exception found in section 2460 G. C., and there is no allegation that the claim had been allowed by the commissioners. So the court further says:

“We hold, therefore, that without the allegation that the amount to be paid has been allowed by the county commissioners the answer in this case is bad, and for this reason and this reason alone, the demurrer is sustained.”

This case, then, is decided only upon a defect of pleading. Enough is said to indicate that the compensation of an assistant is an expense, but whether a proper necessary expense, as the law then read, is not decided, and whether the county commissioners had or had not allowed the same was not within the court's knowledge. Had such an allegation been contained in the answer, there would have been raised the question of proper necessary expense and that of the court's control of the discretion of the county commissioners. On these questions the court's action can only be conjectured. The case then decides little, if anything, going to the merits of the controversy. Enough is said in the opinion that “expenses” as used in the law may cover any personal services rendered. Whether such expense is “proper necessary expense” is not decided.

In the instant case there can be little doubt that the pay of a part time assistant may become a proper and necessary expense, but it is difficult to see how such assistance can be needed for the entire year. Certainly, not simply to care for the work caused by the absent voter's law.

The election law provides, in section 4877 G. C., for a deputy clerk and assistant clerks in counties in which registration cities are situated. That limitation expressly provided in the law indicates that it was not intended to provide such assistants in counties in which there are no registration cities. The conclusion must be reached, then, that in counties in which there are no registration cities, expenses by the board of election outside of those specifically provided for by statute must come within the term “proper and necessary” used in the law, and that provision invokes the good judgment and sound discretion, first of the board of deputy state supervisors of elections, and lastly that of the county commissioners in approving and allowing the same. It then becomes incumbent upon the board of deputy state supervisors of elections to ascertain whether its judgment in incurring

such proper and necessary expenses in the conduct of elections will later be concurred in by the board of county commissioners before it creates such claim. It is immaterial how this shall be arranged. That it is commonly arranged between these boards may be assumed. Without doubt, the board of county commissioners allows many items of expense made by boards of deputy state supervisors of elections as coming within "proper and necessary expenses" at a general election. In the allowance of any claim, the county commissioners, if they deem the claim excessive, but proper and necessary, may reduce the same and pay what in their judgment is proper and reasonable.

Your attention is here called to an opinion of this department found in Opinions of the Attorney-General, 1919, Vol. II, page 1579, wherein it is held that the use of a telephone in the room occupied by the board of deputy state supervisors of elections during the election period is necessary, but that the employment of a night operator at some point in the county is not a proper and necessary expense. Again, in an opinion found in Opinions of the Attorney-General, 1920, Vol. I, p. 3, certain expenses are thought to be proper and necessary, yet the last sentence of the opinion says: "This means, of course, that this bill must be presented to and allowed by the county commissioners."

It is significant to show the intent of the law givers that in 1917 (107 O. L. 52), when sections 5078-1 G. C. et seq. were enacted, no provision was made for an assistant clerk in counties in which there were no registration cities; yet the law, with considerable care, provides just how absent voters' ballots shall be distributed when received, and provides that such absent voters shall pay their own postal expense in casting their ballots. Two general assemblies, since the enactment of the absent voter's law and since its operation could be observed, have not thought it necessary to enact a law providing for the extra help asked for by your deputy state supervisors of elections, although these assemblies have enacted several amendments to the election laws.

Specifically answering you, then, it is the opinion of this department that the employment of an assistant to the board of deputy state supervisors of elections in counties in which there are no registration cities, for the entire year, is not the intent of the law and hence not within the term "proper and necessary expense" as found in section 4821 G. C.; that the employment of an assistant for part time services may be a proper and necessary expense; the expense of such assistant depends upon the discretion and good judgment of the board of deputy state supervisors of elections in the first instance and that of the county commissioners in the last instance; and the county commissioners under section 2460 G. C. may pay in full or pay in part or refuse to allow any claim for expenses incurred by the board of deputy state supervisors of elections under section 4821 G. C., as their judgment dictates.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*