

## OPINION NO. 84-091

## Syllabus:

1. A board of county commissioners may not require a board of elections to use a standard form employment contract for the part-time employees of the board of elections.
2. Because a county board of elections is not a subdivision or taxing unit, R.C. 5705.41(D), which prohibits the making of a contract or giving of an order involving the expenditure of money absent a certificate showing the availability of funds, does not apply to contracts entered into by a county board of elections.

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**To: Wilfrid G. Dues, Preble County Prosecuting Attorney, Eaton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1984**

I have before me your request for my opinion regarding the employment of part-time employees by the county board of elections. I have rephrased your questions as follows:

1. May a board of county commissioners require the county board of elections to use a standard form employment contract supplied by the county and used for part-time county employees?
2. Is a board of elections required to attach a certificate, issued by the county auditor pursuant to R.C. 5705.41(D) showing the availability of funds, to contracts entered into between the board of elections and part-time employees?

With regard to your first question, I note that, as a creature of statute, a board of county commissioners has only that authority which is expressly granted by statute or which is necessarily implied therefrom. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947); State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916). I am unaware of any express statutory provision which empowers a board of county commissioners to require a board of elections to use a standard form employment contract for board of elections employees, and further, there is no statutory provision from which such authority may be implied.

Pursuant to R.C. 3501.14, a board of elections may appoint employees, "prescribe their duties, and, by a vote of not less than three of its members, fix their compensation." R.C. 3501.14 further provides that board employees serve at the discretion of the board and may be summarily removed by a majority vote of the board's membership. See R.C. 124.11(A)(2) (employees of a board of elections are in the unclassified service); R.C. 3501.11(D) (a board of elections shall appoint

and remove its employees). Cf. R.C. 3501.16 (the Secretary of State may remove board employees for various specified causes). R.C. 3501.14 specifically provides that, "[t]he board may also employ additional employees, when necessary, for part time only at the prevailing rate of pay for such services."

Thus, a board of elections has broad authority with regard to its employees. The board has the express statutory authority to appoint, remove, and compensate employees, including part-time employees. Further, pursuant to its authority to compensate its employees, a board of elections has the implied authority to grant employees any fringe benefit absent constricting statutory authority.<sup>1</sup> See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980); State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976); 1981 Op. Att'y Gen. No. 81-052; 1981 Op. Att'y Gen. No. 81-015.

A board of county commissioners has been granted certain limited statutory powers with regard to employees of a board of elections. A board of county commissioners may, for example, promulgate a sick leave payment policy for county employees pursuant to R.C. 124.39(C), which, if adopted, would cover board of elections employees.<sup>2</sup> See Op. No. 81-015. The board of county commissioners also has the authority to appropriate the funds from which board of elections employees are compensated. R.C. 3501.17. See Op. No. 81-015. However, once the board of county commissioners has appropriated a sufficient amount to meet the necessary expenses of the board of elections, the commissioners have no further control over the expenditures of the board of elections. See 1961 Op. Att'y Gen. No. 1992, p. 23. See also 1969 Op. Att'y Gen. No. 69-158; 1930 Op. Att'y Gen. No. 1961, vol. II, p. 887. Further, a board of county commissioners has no authority to change arbitrarily the amounts requested by the board of elections for its necessary and proper expenses. See 1932 Op. Att'y Gen. No. 4023, vol. I, p. 154.

Although a board of county commissioners does have limited authority with regard to board of elections employees, the commissioners, as noted above, have no authority to require a board of elections to use a standard employment form for its part-time employees. The proposed contract form, a copy of which you have provided, attempts to define certain components of the employees' compensation. As established above, however, a board of county commissioners has no general authority to prescribe compensation, including fringe benefits, for board of elections employees; rather, it is the board of elections which has the authority to determine its employees' compensation.<sup>3</sup> Since a board of county commissioners has no express statutory authority to prescribe an employment contract to be used by a county board of elections in hiring part-time employees, and since the county commissioners have no express statutory powers or duties from which such authority is necessarily implied, it is my opinion that a board of county commissioners has no authority to require a board of elections to use a standard form employment contract for its part-time employees.

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<sup>1</sup> I note that employees of county boards of elections are not subject to the terms of R.C. Chapter 4117, the public employees collective bargaining act. R.C. 4117.01(C)(12).

<sup>2</sup> The promulgation of a sick leave payment policy for county employees by a board of county commissioners pursuant to R.C. 124.39(C) would not restrict the authority of a county board of elections to promulgate its own sick leave payment policy for employees, providing the board's policy provided benefits at least as great as any benefits to which such employees may otherwise be entitled. See 1981 Op. Att'y Gen. No. 81-015. See also 1984 Op. Att'y Gen. No. 84-071; 1984 Op. Att'y Gen. No. 84-061.

<sup>3</sup> Although the board of county commissioners does have limited statutory authority with respect to granting fringe benefits to county employees, see, e.g., R.C. 124.39(C), there are certain minimum benefits provided for by statute, see, e.g., R.C. 124.38, which may not be reduced. See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980).

I turn now to your second question, whether a board of elections is required to have the county auditor's certificate attached to contracts entered into between the board and part-time employees. R.C. 5705.41(D) prohibits a subdivision or taxing unit from making "any contract...unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same...has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances." The Supreme Court of Ohio has held that the certificate requirements of R.C. 5705.41(D) do not apply to contracts entered into by boards of elections, since a board of elections is not a subdivision or taxing unit. State ex rel. Columbus Blank Book Manufacturing Co. v. Ayres, 142 Ohio St. 216, 51 N.E.2d 636 (1943). See 1930 Op. No. 1961. In response to your second question, a board of elections is not required to attach the county auditor's certificate of the availability of funds issued pursuant to R.C. 5705.41(D) to a contract entered into between the board and a part-time employee.

In conclusion, it is my opinion, and you are advised, that:

1. A board of county commissioners may not require a board of elections to use a standard form employment contract for the part-time employees of the board of elections.
2. Because a county board of elections is not a subdivision or taxing unit, R.C. 5705.41(D), which prohibits the making of a contract or giving of an order involving the expenditure of money absent a certificate showing the availability of funds, does not apply to contracts entered into by a county board of elections.