

Note from the Attorney General's Office:

1965 Op. Att'y Gen. No. 65-193 was overruled by
1986 Op. Att'y Gen. No. 86-077.

OPINION 65-193**Syllabus:**

Employees of county boards of elections are state employees whose vacation rights are governed by Section 121.161, Revised Code.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, November 5, 1965

Your question for my opinion reads as follows:

"I would appreciate having your opinion on the question of whether the vacations of the employees of county boards of elections are governed by the provisions of Section 121.161, Revised Code or by the provisions of Section 325.19, Revised Code. The former section applies to state employees and the latter to county employees."

Since neither Section 121.161, nor Section 325.19, Revised Code, defines the terms, state employee or county employee, reference to other sources is necessary.

Section 3501.04, Revised Code, hereinafter quoted, designates the Secretary of State as the chief election officer of the state.

"The secretary of state is the chief election officer of the state, with such powers and duties relating to the registration of voters and the conduct of elections as are prescribed in Title XXXV of the Revised Code. He shall perform these duties, in addition to other duties imposed upon him by law, without additional compensation."

Section 3501.05, Revised Code, governing the duties of the Secretary of State as chief election officer provides in pertinent part as follows:

"The secretary of state shall:
(A) Appoint all members of
boards of elections * * *"

Section 3501.14, Revised Code, in turn, authorizes by the quoted language following, the employment of additional employees by the board.

"* * * * *"

"The board may, when necessary, appoint a deputy clerk who shall not be a member of the same political party of which the clerk is a member, and one or more assistant clerks and other employees, prescribe their duties, and, by a vote of not less than three of its members, fix their compensation.

"* * * * *"

Further, both board members and board employees serve subject to being dismissed by the Secretary of State for the causes designated in Section 3501.16, Revised Code, which provides as follows:

"The secretary of state may summarily remove any member of a board of elections, or the clerk, deputy clerk, or any other employee of the board, for neglect of duty, malfeasance, misfeasance, or nonfeasance in office, for any willful violation of Title XXXV of the Revised Code, or for any other good and sufficient cause. Vacancies in the office of chairman, clerk, or deputy clerk shall be filled in the same manner as original selections are made, from persons belonging to the same political party as that to which the outgoing officer belonged. If such vacancies cannot be so filled, they shall be filled by the secretary of state."

Keeping in mind the statutory framework outlined, supra, it is to be noted that the Supreme Court of Ohio held in the case of State, ex rel. Columbus Blank Book Mfg. Co. v. Ayers, 142 Ohio St., 216 (1943) that members of the boards of elections are deputies of the Secretary of State and are not county officers. The Court stated in branch two of the syllabus as follows:

"2. Members of the boards of elections act under the direct control of and are answerable only to the Secretary of State in his capacity as the chief election officer of the state. They perform no county functions and are not county officers."

In light of the holding in the Columbus Blank Book Mfg.

Co. case, cited supra, and the statutory provisions regarding the employment and dismissal of board employees as well as board members, it is my opinion and you are so advised that employees of county boards of elections are state employees whose vacation rights are governed by Section 121.161, Revised Code.