

OPINION NO. 84-009

Syllabus:

Pursuant to R.C. 3501.14 a board of elections is required to fix the annual compensation of its director and deputy director by the concurrent, affirmative votes of not less than three of its four members.

March 1984

To: James R. Livingston, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 22, 1984

I have before me your request for my opinion regarding the procedure by which a county board of elections is to determine compensation questions involving the director or deputy director of the board. Specifically, your question asks whether R.C. 3501.14 requires three concurring votes to fix the annual salary of the director or deputy director, or whether two votes in favor of a compensation resolution and one in dissent is sufficient to satisfy the statutory requirement that compensation for these positions be fixed by a vote of not less than three.

Your question necessarily involves consideration of the statutorily-prescribed political balance of a board of elections, of the Secretary of State's involvement in the board's decision-making process, and of the duties of the director of the board. A review of these matters is, therefore, appropriate before reviewing the pertinent statutory provision.

The board of elections in each Ohio county performs a number of duties that are fundamental to the governmental process, including, but not limited to, the maintenance of election records, the investigation of violations of election laws, and the review of candidates' petitions. R.C. 3501.11. As a critical part of this process, the board necessarily operates within an area of competing interests, and for this reason the provisions of Title 35 evidence a consistent policy that the board of elections personnel should represent a balance among such interests. For instance, a board is made up of four members, two of whom are members of the political party which cast the highest vote for governor in the last preceding gubernatorial election, and two of whom are members of the political party casting the next highest vote. R.C. 3501.06. The board employs a director and deputy director, who are of opposite political parties, and, during reorganizational meetings, the board chooses its chairman, who must be of the party of opposite politics to that of the director. R.C. 3501.09. The board also appoints precinct election officials for each voting district; while their number may vary, these precinct positions must be evenly divided between the two major political parties. R.C. 3501.22, R.C. 3501.23.

This balance of the board of elections, however, results in the possibility that the board may reach impasse on a critical election issue. In such cases, I note that a board of elections is required to submit for the Secretary of State's final determination the issue on which the board has reached a tie vote, or which has received the concurring vote of less than a majority of the full membership of four. See R.C. 3501.11, which provides, in pertinent part: "In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairman shall submit the matter in controversy to the secretary of state, who shall summarily decide the question and his decision shall be final." However, a specific, narrow exception to the statutory authority of the Secretary of State to serve as the final administrative arbiter of elections questions submitted to him by a board of elections is found in R.C. 3501.14 and provides: "A tie vote or disagreement in the board on the amount of compensation to be paid to a director, deputy director, or any employee shall not be submitted to the secretary of state."

The director of the board of elections implements the policies determined by the board and, in general, is in charge of the daily operations of the board office. See R.C. 3501.13. Thus, the director's role is as significant as that of the four-member board to a balanced governmental process, and the question of compensation for the director may also become subject to the competing interests inherent in that process. For this reason, R.C. 3501.14 contains specific provisions governing board procedures on certain compensation questions. That section provides, in pertinent part: "The board of elections shall, by a vote of not less than three of its members, fix the annual compensation of its director and deputy director who are selected in accordance with section 3501.09 of the Revised Code."

It is a fundamental rule of statutory construction that parts of a statute as well as different statutes that are part of the same scheme should be construed so as to render the statutes a consistent and harmonious whole, and a construction that destroys this harmony should be avoided. See Humphrys v. Winous Co., 165

Ohio St. 45, 133 N.E.2d 780 (1956); Gough Lumber Co. v. Crawford, 124 Ohio St. 46, 176 N.E. 677 (1931). Since R.C. 3501.11 and R.C. 3501.14 clearly indicate that questions of compensation must be finally determined without the involvement of the Secretary of State, the politically balanced decision-making process mandated throughout Title 35 can only be ensured by a construction of R.C. 3501.14 that precludes the board, in its compensation determinations, from deciding the question by a vote of less than a majority of its full membership. If this were not so, the inadvertent absence of a single board member and the dissenting vote of another could not prevent two members of the board from increasing the salary of a director whom they favor, or reducing the salary of a director whom they oppose. Therefore, I find it consistent with the balance between competing interests evidenced in Title 35 to construe the phrase "by a vote not less than three" as requiring the board to make the final determination on such questions by the concurrent, affirmative vote of a majority of its full membership.

In conclusion, it is my opinion, and you are so advised, that pursuant to R.C. 3501.14 a board of elections is required to fix the annual compensation of its director and deputy director by the concurrent, affirmative votes of not less than three of its four members.