

operation of the stand up to the aggregate cost of fifteen hundred dollars should be such equipment as is permanently attached to the building. As to this, I am informed by the Director of the Department of Public Works that including a counter and showcase which has been built in so as to become permanently attached to the building, the lessee has installed equipment at a cost of more than fifteen hundred dollars, and thus, in this respect, has complied with the provisions of the lease. In any event, there is nothing in the provisions of this lease which required the lessee to install in connection with the operation of this stand the particular articles and equipment referred to in your communication which, as above noted, were furnished and installed by the Director of Public Works, acting for and on behalf of the state. This is, perhaps, a sufficient answer to the question presented by you which is one with respect to the obligation of the lessee to furnish and install the particular equipment here in question. As above indicated, this question is to be answered in the negative.

I assume that the real question here presented for determination is whether on proper vouchers therefor you are authorized to issue warrants covering the contract prices of these articles of equipment which, as above stated, were made and installed on contracts therefor made by the Director of Public Works. Under the provisions of section 154-40, General Code, the Director of the Department of Public Works is authorized, among other things, to make contracts for and supervise the construction and repair of buildings under the control of the state government or any department, office or institution thereof. Following the practical construction which has been given to the provisions of this section, no difficulty is encountered in finding that the Director of the Department of Public Works had the necessary power and authority to furnish and install these articles as a part of the permanent equipment of the building, and if the requirements of the law have been observed by the Director of Public Works in entering into contracts for this equipment and there is an appropriation available therefor, no reason is seen why proper vouchers and warrants should not be issued covering the cost of the same.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1602.

COUNTY BOARD OF ELECTIONS—UNAUTHORIZED TO REDUCE RATE OF COMPENSATION PAYABLE TO PRECINCT JUDGES AND CLERKS BELOW THAT PROVIDED BY SECTION 4785-28, GENERAL CODE.

SYLLABUS:

Boards of elections of counties are unauthorized to establish a lower rate of compensation to be paid to precinct judges and clerks than that provided for by section 4785-28 of the General Code.

COLUMBUS, OHIO, September 22, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your recent inquiry reads as follows:

"I have received letters from Boards of Elections asking as to whether or not they may establish a lower rate of compensation to be paid to precinct judges and clerks than that provided for in Section 4785-28 of the General Code.

"Will you kindly give me your official opinion as to whether or not reduction in such compensation could be made and advise the manner of procedure which should be followed by a Board of Elections feeling the need of such action."

Section 4785-28, General Code, provides as follows:

"The judges and clerks shall receive as compensation for their services, when actually serving, the sum of eight dollars for each general, primary and special election, in counties of less than two hundred and fifty thousand population according to the next preceding federal census; and ten dollars for each general, primary and special election in counties of more than two hundred and fifty thousand population. Where registration at the precinct places is required, the precinct registrars shall be paid for their services five dollars per day. The board may withhold the compensation of any precinct official for failure to obey the instructions of the board or to comply with the provisions of the law relating to the duties of such precinct judge or clerk."

The legislature, by the provisions of the foregoing section, has definitely fixed the compensation of judges and clerks of elections. No authority in such statute or any other statute is given to the boards of elections of the counties to alter such compensation. It is a well known principle of law that public officers and boards have no powers except such as are expressly given or are to be implied from the powers that are expressly given. See *Elder vs. Smith, Aud.*, 103 O. S. 369; *State ex rel. vs. Commissioners*, 8 N. P. (N. S.) 281, affirmed; *Iretton vs. State ex rel.* 12 C. C. (N. S.) 202, which was affirmed without opinion; *Iretton vs. State ex rel.*, 81 O. S. 362.

In 46 Corpus Juris, page 1020, section 253, it is stated:

"* * * an officer's compensation established by statute, cannot be increased or diminished by an executive officer or board, although such executive or board is the appointing power * * *."

In support of the above statement of law, the cases of *Dyer vs. U. S.* 20 Ct. Cl. 166; *Goldsborough vs. U. S.* 10 F. Cases No. 5519, Taney 80; *Clark vs. State*, 142 N. Y. 101, 36 N. E. 817; *Emmitt vs. New York*, 128 N. Y. 117, 28 N. E. 19; *Phillips vs. Graham County*, 17 Ariz., 208, 149 Pac. 755; *Jacobs vs. U. S.* 41 Ct. Cl. 452; *Kehn vs. State*, 93 N. Y. 291, and *Terr vs. King*, 1 Ore., 106, are cited, and such text lists no cases holding to the contrary. While the above citation refers specifically to an "officer's" compensation, the same principle is applied in some of the above cases to an "employee." It is therefore unnecessary for the purpose of this opinion to decide whether or not judges and clerks of boards of elections are "officers" or "employees."

It may be here stated that an examination of the three salary reduction acts passed at the third special session of the 89th General Assembly, which acts are known as Amended Senate Bill No. 5 (114 O. L. Pt. 2, p. 65), House Bill No. 1 (114 O. L. Pt. 2, p. 70), and House Bill No. 2 (114 O. L. Pt. 2, p. 72), discloses that the provisions of section 4785-28, General Code, fixing the compensation of judges and clerks of elections are not affected by such acts.

It may be further noted that there were introduced in the 90th General Assembly, the House Bill No. 36, and Senate Bills 2 and 85, which in part sought to lower the rate of compensation of judges and clerks of elections, by amendment of section 4785-28, General Code. However, none of said bills was enacted into law.

In view of the foregoing, the conclusion is irresistible that the board of elections of a county has no power to reduce the compensation provided by section 4785-28, General Code, for judges and clerks of elections.

Inasmuch as I am of the opinion that a county board of elections has no authority to reduce the compensation provided for clerks and judges of elections by section 4785-28, General Code, your second question does not require an answer.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1603.

APPROVAL, CONTRACTS FOR HIGHWAY IMPROVEMENT IN HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, September 22, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

1604.

MILFORD-HILLSBORO ROAD—CONTRACT FOR IMPROVEMENT OF PART THEREOF CONSTRUED (S. H. NO. 9, U. S. ROUTE NO. 50).

SYLLABUS:

Contract for the improvement of part of the Milford-Hillsboro Road, S. H. No. 9, U. S. Route No. 50, construed.

COLUMBUS, OHIO, September 23, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

"I respectfully request your opinion on the following:

Under a letting of June 19, 1931, a contract was awarded to The S. Monroe & Son Company of Portsmouth, Ohio, for the widening with concrete and surfacing with T-25 of Sections P—Q—L—K—Pt—SH 9 in Brown and Highland Counties with proposal No. 1 in Brown County and proposal No. 2 in Highland County. It is stated in the two proposals that there should be a certain number of square yards of a certain average compacted depth.