

It is, therefore, my opinion, in specific answer to your inquiry, that said Association is required to file a statement of its receipts and expenditures as provided in Section 5175-1, General Code of Ohio.

Relative to the second branch of your inquiry, Section 5175-6, General Code, provides where the statements are required to be filed, specifying when to be filed with the Secretary of State and when to be filed with the Board of Deputies, state supervisors of said election of the county.

Section 5175-14 provides for the filing of a petition alleging failure to comply with the law and a summary investigation thereon.

Section 5175-15 states that the petition may be filed by the Attorney General of the state, the prosecuting attorney of the county, a candidate voted for at the election, or by any five resident and qualified voters who voted at such election.

Since the committee in this instance apparently confined its activities to Miami County, it would seem proper that the petition be filed by either yourself, or a candidate voted for at the election, or any five resident and qualified voters who voted at such election.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3130.

EXPENSES—ELECTIONS HELD IN NOVEMBER OF ODD NUMBERED
YEARS—COUNTY BOARD OF EDUCATION EXEMPT FROM ANY
CHARGE.

SYLLABUS:

Sections 5053 and 5054 of the General Code, which must be construed together, do not require election expenses therein mentioned to be charged against a county board of education.

COLUMBUS, OHIO, January 12, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication reads:

“You are respectfully requested to furnish this department with your written opinion upon the following:

Section 5053, G. C., provides that in November elections held in odd numbered years the expense of the elections is to be a charge against the township, city, village or political division in which such election was held. Members of a county board of education are elected in odd numbered years.

Question: Should any part of the cost of the election in odd numbered years be charged back against the county board of education, and if so, how is the county auditor to charge the same?”

Section 5053 of the General Code, to which you refer, provides:

"In November elections held in odd numbered years, such compensation and expenses shall be a charge against the township, city, village or political division in which such election was held, and the amount so paid by the county shall be retained by the county auditor from funds due such township, city, village or political division, at the time of making the semi-annual distribution of taxes. The amount of such expenses shall be ascertained and apportioned by the deputy state supervisors to the several political divisions and certified to the county auditor. In municipalities situated in two or more counties, the proportion of expense charged to each of such counties shall be ascertained and apportioned by the clerk or auditor of the municipality and certified by him to the several county auditors."

Section 5054, General Code, which it is believed must be construed in connection with Section 5033, *supra*, provides:

"County commissioners, township trustees, councils, boards of education or other authorities, authorized to levy taxes, shall make the necessary levy to meet such expenses, which levy may be in addition to all other levies authorized or required by law."

It is evident from a perusal of the two sections hereinbefore quoted that the Legislative intention in the enactment of said sections was to require the charging of such election expenses as are therein referred to, which are incurred in the November election in odd numbered years, against political divisions which are authorized to levy taxes. This must be true for the reason that Section 5054, *supra*, undertakes to provide the means for paying such expenses by authorizing a tax levy which is to be in addition to all other levies authorized or required by law. This authority is limited to "authorities, authorized to levy taxes."

If the conclusion I have hereinbefore reached is correct, then the question arises as to whether or not a county board of education is authorized to levy taxes.

Section 4684, General Code, defines a county school district as follows:

"Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of Sections 4688 and 4688-1, and territory detached for school purposes, and including the territory attached to it for school purposes, shall constitute a county school district. In each case where any village or rural school district is situated in more than one county such district shall become a part of the county school district in which the greatest part of the territory of such village or rural district is situated."

Sections 4728 to 4744-6 inclusive of the General Code, provide for the election of the members of the county board of education and define their powers and duties. It will be unnecessary to consider said sections in detail for the purposes of this opinion.

There is, in my opinion, no provision of law that can be construed as authorizing the county board of education to levy taxes. Section 4744-2, General Code, requires the said board to certify to the county auditor the number of teachers and

county superintendents employed and the amount of their compensation, with the amounts to be apportioned to each district for payment of its share of the salaries of the county superintendent and assistant county superintendent and the local expense of the normal school and the contingent expenses of the county board.

Section 4744-3, General Code, provides:

“The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the ‘county board of education fund.’ The county board of education shall certify under oath to the state auditor the amount due from the state as its share of the salaries of the county and assistant county superintendents of such county school district for the next six months. Upon receipt by the state auditor of such certificate, he shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund.”

The said sections last mentioned, which are the only provisions of the statutes relating to the payment of expenses of the county board of education, do not in any wise authorize the levying of a tax.

Based upon the foregoing, in answer to your inquiry you are advised that in my opinion Sections 5053 and 5054 of the General Code, which must be construed together, do not require election expenses therein mentioned to be charged against a county board of education.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3131.

LAND—CONVEYANCE WITHOUT RESERVATION TO STATE OF OHIO
INCLUDES BUILDINGS THEREON—ORAL EXCEPTIONS OF NO
EFFECT—HOW MORAL CLAIM RECOGNIZED.

SYLLABUS:

1. *Where a tract of land is conveyed to the state in fee simple, with full covenants and warranties and without exception or reservation, the state acquires title to the buildings located upon such tract in spite of the contemporaneous oral argument between the grantor and administrative officials of the state whereby title to the buildings was reserved to the grantor.*

2. *In such case there is no legal right to compensation for such building and a claim therefor can only be paid as a moral obligation after proper action on the part of the Sundry Claims Board and the General Assembly.*