

I have given very careful consideration to the opinion of my predecessor, to which Mr. Parks refers, as found in volume 1, Opinions of Attorney General for 1921, at page 779, but for the reasons herein set out I find myself unable to concur in the conclusions reached in that opinion.

Specifically answering the question which is submitted, you are advised that in the opinion of this department the health board in determining the expenditures for the various purposes, must keep within the several items as fixed by the budget commission. I express no opinion on the question of whether the health board may apply to the county commissioners for additional help in an emergency, for the reason that the answer to such question would depend wholly upon the attendant circumstances.

Respectfully,

C. C. CRABBE,

Attorney-General.

2243.

APPROVAL, BOND OF HERMAN R. WITTER, IN THE SUM OF \$10,000.00,
FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS DIRECTOR
OF INDUSTRIAL RELATIONS.

COLUMBUS, OHIO, February 27, 1925.

HON. HERMAN R. WITTER, *Director, Department of Industrial Relations, Columbus, O.*

DEAR SIR:—You have submitted to this department a bond upon which the Columbia Casualty Company appears as surety, to cover the faithful performance of your duties as Director of Industrial Relations. The amount of the bond is \$10,000. It is evidently executed in pursuance to the provisions of section 154-14 of the General Code.

Finding said bond in proper legal form, I have noted my approval thereon as to form and return the same herewith to you.

Your attention is directed to the fact that the Governor is required to approve the security and amount.

Respectfully,

C. C. CRABBE,

Attorney-General.

2244.

AMENDED SUBSTITUTE HOUSE BILL No. 27 CONSTRUED.

SYLLABUS:

1. *The amount of the deficiency to be certified under Amended Substitute House Bill 27 is the sum of the deficiency which exists February 1, 1925, and the estimated deficiency for the balance of the fiscal or school year.*

2. *Where a subdivision contains part of a precinct without containing all of said precinct, the petition signed must contain a number of electors living in said subdivision equal to the majority of the total number who voted for governor in such subdivision, plus the number who voted for governor in precincts, a part of which is included in the subdivision.*

3. *The question of taking advantage of the provisions of this act is a discretionary matter with the taxing authorities of the various subdivisions.*

4. *The term "board of deputy state supervisors and inspectors of elections" as used in this act, includes such board and the board of deputy state supervisors of elections.*

COLUMBUS, OHIO, February 27, 1925.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your several communications enclosing letters asking for construction of different sections of Amended Substitute House Bill No. 27.

Many inquiries have been received by this office asking for construction of different sections of this act, and as the time is limited in which the taxing authorities of a subdivision may take advantage of this act, I am taking the liberty of answering all inquiries in this opinion so that it will facilitate the action which must necessarily be taken by the board of deputy state supervisors and inspectors of elections.

The first inquiry is as follows:

"After a somewhat careful reading of the provisions of this bill, it occurred to us that there is a conflict in the amount of the funds that may be certified by the auditor for collection in June.

"Referring to paragraph 5, section 2, it would seem to indicate that not only the amount of the deficit on the first of February, 1925, but the estimated deficiency in the amount necessary to meet current obligations for the balance of the fiscal year or the school year may be added. Thus providing for all deficits real and estimated up to the close of the present fiscal year.

"However, in reading further we find that section 5 of the bill distinctly states that the amount named by the taxing authorities in their certification to the Auditor shall not exceed the deficiency certified under section 2 of this act which would be the amount of the deficiency up to February first, 1925."

Section 2 of Amended Substitute House Bill No. 27 provides as follows:

"The taxing authorities of a subdivision by resolution passed not later than the fifteenth day of March, 1925, may direct the accounting officer of the subdivision to make up a financial statement of such subdivision as of the first day of February, 1925. Said accounting officer shall immediately examine the records, books and accounts of his office and shall make up and file such statement in the office of the clerk of the taxing authorities. Such statement shall contain:

"(1) The balance outstanding to the credit of the several funds, except sinking fund, on the books of the subdivision on February 1, 1925.

"(2) A showing in detail of the outstanding unfunded indebtedness of the several funds of such subdivision on February 1, 1925, whether represented by certificates of indebtedness, accounts payable, or otherwise, with the dates of maturities thereof.

"(3) An estimate of the amount necessary in the several funds to provide for the lawful activities of the subdivision, exclusive of interest, sinking fund and retirement charges for the remainder of the then current fiscal year. The sum of said amount and the amount already expended for said activities in the then current fiscal year shall not be larger than the amount expended for such activities during the preceding fiscal year, excluding in each case the interest, sinking fund and retirement charges.

"(4) The amount of taxes estimated to come into the treasury of said subdivision to the credit of such funds during the remainder of the then current fiscal year for cities, and school year for schools and applicable to the purpose of such year.

"(5) An estimate of the amount which will be received by such subdivision during the remainder of the current fiscal year for cities and school year for schools from sources of revenue other than taxation and which can be credited to such funds. If such accounting officer finds that after the application of the balance found in clause (1) of this section, and the amounts estimated in clauses (4) and (5) of this section, there will still be a deficiency in the amount necessary to meet the indebtedness found in clause (2), and the amount estimated under clause (3), he shall certify under oath to the taxing authorities the amount of such deficiency together with the various funds affected."

This section authorizes the taxing authorities of a subdivision by resolution to direct the accounting officer of the subdivision to make up a financial statement of such subdivision as of the first day of February, 1925, and that such statement shall contain:

(1) The balance outstanding to the credit or the debit of the several funds, except sinking funds, on the books of the subdivision on February 1, 1925.

(2) A showing of outstanding unfunded indebtedness of the subdivision on February 1, 1925.

(3) An amount necessary to provide for the lawful activities of the subdivision, exclusive of interest, sinking fund and retirement charges for the remainder of the then current fiscal year. The sum of this amount and the amount already expended in the then current fiscal year shall not be larger than the amount expended for such activities during the preceding fiscal year, excluding in each case the interest, sinking fund and retirement charges.

(4) The amount of taxes estimated to come into the treasury of a subdivision during the remainder of this fiscal year for cities and school year for schools.

(5) An estimate of the amount which will be received by such subdivision during the remainder of the current fiscal year for cities and school year for schools from sources of revenue other than taxation.

If such accounting officer finds, that after the application of the balance found in clause 1 of this section, and the amounts estimated in clauses 4 and 5 of this section, there will be a deficiency in the amount necessary to meet the indebtedness found in clause 2, and the amount estimated under clause 3, he shall certify under oath to the taxing authorities the amount of such deficiency, together with the various funds affected.

Section 5, in part, provides:

"Thereupon the taxing authorities of said subdivision shall have power to levy a tax on the tax list of the subdivision in the amount named in said petition which shall not exceed the deficiency certified under section 2 of this act, and shall not exceed a sum equal to three mills on the tax duplicate of the subdivision, and said levy shall be certified before May 20, 1925, to the county auditor of the county in which the subdivision is located."

It will be noticed that the tax levy shall not exceed the deficiency certified under section 2 of this act. The deficiency certified under section 2 of this act will be found to be as follows:

"* * * deficiency in the amount necessary to meet the indebtedness found in clause (2), and the amount estimated under clause (3)," * * *

This means that the amount which may be certified is the deficiency on the first day of February, 1925, plus the estimated deficiency in the amount necessary to meet the obligations for the balance of the fiscal or school year. The reference in section 5 to section 2 refers to section 2 of the act, and not to clause (2) of section 2. The reference, therefore, means that the deficiency to be certified is the deficiency already existing and the estimated deficiency for the balance of the fiscal or school year.

It is therefore my opinion that the amount of deficit to be certified by the accounting officer shall be the amount of the deficiency which exists February 1, 1925, and the estimated deficiency for the balance of the fiscal or school year, provided such amount is not greater than that which would require a levy of three mills, and such deficiency, plus the actual and estimated expenditures for the fiscal year shall not be larger than the amount expended for such activities during the preceding fiscal year, excluding, in each case, the interest, sinking fund and retirement charges.

The second inquiry is as follows:

"Cambridge city school district extends beyond the corporation limits of the city of Cambridge, and contains several hundred voters that are residents of Cambridge township, but are within the Cambridge city school district. In the first part of section four, this new law provides that the petition is to be signed by a number of electors of said subdivision (which evidently means the school district), equal to a majority of the total number who voted for governor in said subdivision. The last paragraph of this section provides: 'If any subdivision contains part of any precinct, without containing all of said precinct, then all electors who voted for governor in said precinct shall be considered as voting for governor in said subdivision for all the purposes of this section.'

"This last paragraph described the situation with reference to our school district and it provides that all electors who voted for governor in said precinct, shall be considered as voting for governor in said subdivision for all the purposes of this section. The question therefore is, will it be necessary to obtain the signatures of not only a majority of the electors within the school district, but that this majority must include and be a majority of all the electors of the precincts, a part of which are within the school district and the greater part without."

Section 4 of Amended Substitute House Bill No. 27, provides as follows:

"Upon the filing with the board of elections before May 1, 1925, of a petition signed by a number of electors of said subdivision equal to a majority of the total number who voted for governor in said subdivision at the general election in November, 1924, the board shall ascertain within fifteen days that said petition contains the required number of signatures, that each part of said petition has been duly verified as herein prescribed and that the signatures are signatures of duly qualified electors of said subdivisions and upon the making of such finding shall forthwith certify said petition to the taxing authorities of the subdivision concerned. Where the subdivision is situated in two or more counties, a petition shall be filed with the board of deputy state supervisors and inspectors of elections of the county in which were cast at the general election in November, 1924, the greater number of votes cast for governor in said subdivision. If any subdivision contains part of any precinct, without containing all of said precinct, then all electors who voted for governor in said precinct shall be considered as voting for governor in said subdivision for all the purposes of this section.

"All the provisions and penalties of sections 5175-29n, 5175-29o, 5175-

29p and 13323-1 of the General Code shall be extended and apply to the petitions provided for in this act as if such petitions were petitions for a referendum on a legislative act."

The first part of this section provides that the petition shall be signed by a number of *electors of said subdivision equal to a majority of the total number who voted for governor in said subdivision at the general election in November, 1924.* This section further provides that if any subdivision contains part of any precinct without containing all of said precinct, then all electors who voted for governor in said precinct shall be considered as voting for governor in said subdivision, for all the purposes of this section.

As the section provides that the petition must be signed by a number of the electors of the subdivision equal to a majority of the total number who voted for governor in said subdivision in cases where the subdivision did not include the whole of a precinct, but contained part of a precinct, it would be impossible to arrive at what was a majority of the electors of a subdivision voting for governor in the year 1924. The impossibility of arriving at the number of electors voting for governor in said subdivision made necessary the fixing of some standard for computing the number of electors voting for governor. The standard fixed by the legislature in this act is fixed by the latter part of this section, and provides that all electors who voted for governor in said precinct shall be considered as voting for governor in said subdivision for all the purposes of this act. This language is very plain, and is understandable, and from such language we are enabled to arrive at the number of electors to be considered as voting for governor. The fact that this will work a hardship in some cases by making it necessary to secure the number of electors residing in the subdivision, which could possibly be eighty or ninety per cent of such electors, in order to take advantage of this act, does not justify us in reading into this section anything not placed there by the legislature.

It is believed that the act as written will in some instances make it impossible for a subdivision to take advantage of this act, but such a consideration does not permit us to add to the words of the legislature. This is a matter which is properly within the province of the legislature, and can be corrected by them.

It is therefore my opinion that where a subdivision contains part of a precinct without containing all of said precinct, the petition signed must contain a number of electors living in said subdivision equal to a majority of the total number who voted for governor in said subdivision, and the number voting for governor in a precinct a part of which is comprised in the subdivision.

The third inquiry is as follows:

"Section 3 of said act states in part: 'If any subdivision contains part of any precinct without containing all of said precinct, then all electors who voted for governor in said precinct shall be considered as voting for governor in said subdivision for all purposes of this section.'

"Should this clause be construed just as it reads 'that all electors who voted for governor in said precinct shall be considered as voting for governor in said subdivision?'

"If so, we apprehend that no elector would care to make affidavit to a petition in a subdivision lying in part of a precinct, under the form of affidavit prescribed."

In answer to this inquiry reference is made to the answer given to the second inquiry in this opinion. Since section 4 of this act, quoted *supra*, provides that the only persons who may sign said petition are the electors of the municipality or school

districts, there need be no hesitancy on the part of the elector to subscribing to the affidavit provided.

The fourth inquiry is as follows:

"I am writing you to obtain the necessary forms in carrying into execution House Bill No. 27 passed February 4, 1925, signed by the governor February 10, 1925, if you have such forms for distribution.

"Would also like to make inquiry as to the necessary procedure in case of boards of education who should avail themselves of this act and refuse to do so."

In answer to the first part of the inquiry, it is only necessary to say that this office does not have the necessary forms for carrying into execution House Bill No. 27. An examination of the bill will show that there is only one form prescribed by said bill, and this form is set out in full in the act itself.

The second part of this inquiry is as follows:

"Would also like to make inquiry as to the necessary procedure in case of boards of education who should avail themselves of this act and refuse to do so."

Section 2 of this act provides in part as follows:

"The taxing authorities of a subdivision, by resolution passed not later than the fifteenth day of March, 1925, may direct the accounting officer of the subdivision to make up a financial statement of such subdivision as of the first day of February, 1925." * * *

Section 3 of this act provides:

"Thereupon the taxing authorities by resolution duly passed by an affirmative vote of two-thirds of all their members elected or appointed, shall determine whether or not such deficiency exists, and the amount thereof, which shall not be greater than that certified to it by the accounting officer, and, shall request the board of deputy state supervisors and inspectors of elections to prepare a petition for the levy of a tax in an amount," etc.

Section 4 of this act provides in part:

"Upon the filing with the board of elections before May 1, 1925, * * * the board * * * shall forthwith certify said petition to the taxing authorities of the subdivision concerned." * * *

Section 5 of this act provides:

"Thereupon the taxing authorities of said subdivision shall have power to levy a tax on the tax list of the subdivision in the amount named in said petition" * * *

The title of this act is as follows:

"To authorize the taxing authorities of school districts and municipal corporations to levy taxes for the payment of deficiencies in operating revenues for the current fiscal year on petition of the electors, to authorize the issue of certificates of indebtedness and to declare an emergency."

While the title of a bill is no part of such bill, it is permissible to examine the title for the purpose of arriving at the intent of the legislature. An examination of this title discloses that the bill authorizes the taxing authorities of the subdivision mentioned therein to levy taxes for the payment of deficiencies in operating revenues on petition of the electors, and authorizing the issue of certificates of indebtedness.

Section 5, which is the section authorizing the levy, uses the words "shall have power to levy a tax," but does not make it mandatory upon the taxing authorities to make such levy. If this authority is construed as a mandatory duty, it will cause in some instances a conflict in the different sections. Section 5 besides authorizing the levy of this tax, provides that such levy shall not exceed the deficiency certified, and shall not exceed a sum equal to three mills on the tax duplicate. This section would permit the taxing authorities of a subdivision to levy an amount less than the estimated deficiency certified. If the taxing authorities are authorized to levy an amount less than the amount certified, they certainly may refuse to levy any amount, as this is a discretionary matter. If the act is mandatory that they may levy the amount of the deficiency, it would in some cases conflict with the limitation of three mills placed on such levy by this section.

It is therefore my opinion that the question of taking advantage of the provisions of this act is a discretionary matter with the taxing authorities of the various subdivisions.

The fifth inquiry is as follows:

"House Bill number 27, recently enacted by the legislature, authorizing taxing authorities of certain subdivisions to levy taxes for the payment of deficiencies in operating revenues provides in part as follows:

"Said board shall have printed a sufficient number of petitions in said form to meet the need of the subdivision, and shall appoint one or more places in each school district or ward where signatures will be received and parts of petition may be filed. Said board may employ persons to receive signatures and petitions in such places, and may expend in said printing, employment and other expenses not to exceed five cents per voter of the subdivision who voted at the general election in November, 1924. Said sum shall be charged in the manner provided for the expenses of special elections held in said subdivision."

"Under such provision, would it be illegal to circulate said petitions for signature if the provisions of the act are strictly complied with?"

Section 3 of this act provides:

"Said board shall have printed a sufficient number of petitions in said form to meet the need of the subdivision, and shall appoint one or more places in each school district or ward where signatures will be received and parts of petition may be filed. Said board may employ persons to receive signatures and petitions in such places, and may expend in said printing, employment and other expenses not to exceed five cents per voter of the subdivision who voted at the general election in November, 1924. Said sum shall be charged in the manner provided for the expenses of special elections held in said subdivision."

It will be noted that this section provides the board shall appoint one or more places in each school district or ward where signatures will be received and parts of petitions may be filed. Said board may employ persons to receive signatures and petitions in such places. The use of the words "places where signatures will be received and parts of petition may be filed" might indicate an intent of the legislature to differentiate between the receiving of signatures and parts of petitions.

A petition as defined by the Standard Dictionary is as follows:

"A formal request, written or printed and signed by one or many, preferred to a person in authority or to the legislative or administrative body, asking for the bestowal of some benefit or privilege, the concession or restoration of a right, the redress of a grievance, or such other special action as the applicants desire; also, the document containing such request, or its presentation."

Under this definition, a petition is a request signed by one or more persons; and, obviously, the petition must contain signatures. The language of this section is not free from doubt as to whether or not the intent of the legislature was to limit the signing of the petitions to the places designated by the board, or whether it was their intention to permit the circulation of the petitions elsewhere. The procedure provided in said section is part of a proceeding to levy a tax. Therefore, the courts might follow the rule and construe the section strictly. It would therefore be the safer policy to follow the strict application of the section and have the petitions signed only at the places designated by the board and then no question could be raised upon that point which could affect the validity of a tax levied by such procedure.

The sixth inquiry is as follows:

"Section 4788 of the General Code provides for a board of deputy state supervisors and inspectors of elections, and said House Bill No. 27 makes said act operative in counties having a board of deputy state supervisors and inspectors of elections.

"Section 4803 G. C. provides for a board of deputy state supervisors of elections, which board may be appointed and function in those counties wherein a board of deputy state supervisors and inspectors of elections cannot be appointed, and cannot function.

"It seems from reading said House Bill No. 27 that said emergency law can operate only in those counties which have legally constituted boards of deputy state supervisors and inspectors of elections.

"In this county of Pickaway we have no city wherein annual general registration of the electors is required by law, and this county does not contain two or more cities in which registration is required by law, and I presume there are several other counties in the State of Ohio similarly situated.

"Quaere—Has House Bill No. 27 any force and effect in this Pickaway County?"

Section 3 of this act provides in part:

"Thereupon the taxing authorities * * * shall request the board of deputy state supervisors and inspectors of elections to prepare a petition. * * *"

Section 4788 General Code, provides for the organization of a *board of deputy state supervisors and inspectors of elections* in counties which contain a city wherein annual general registration of electors is required by law. The sections following this section provide for the appointment of such deputies, for the filling of vacancies, organization of the board and the selection of the chief deputy clerk and deputy clerk, and provides for the general powers and duties of the board.

Section 4803 General Code, provides for the organization in counties, except those wherein annual general registration of electors is required by law, of a board of deputy state supervisors of elections. The several sections following this section provide for the appointment, term, filling of vacancies, organization of the board and the duties of the board.

While these two sections contemplate the organization of boards, the duties of which are similar, they must necessarily, for all purposes, be considered as different boards. However, an examination of the general election laws will show that in many instances wherein the laws would relate only to counties in which there was a board of deputy state supervisors and inspectors of elections, the words "deputy supervisors of elections" is used. While I am unable to find any instance in which the title "board of deputy state supervisors and inspectors of elections" is intended to include "board of deputy state supervisors of elections," it is believed that from a study of section 8 of this act, which is the emergency clause, it will be apparent that by the use of the words "board of deputy state supervisors and inspectors of elections" it is meant such board and a board of deputy state supervisors of elections. Section 8 of this act provides:

"This act is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace, health and safety. The reasons for such necessity lie in facts which two-thirds of all the members elected to each branch of the General Assembly have considered, found and determined and which are separately set forth herein as follows: There are a great many municipalities and school districts which are unable to carry on their necessary activities with the funds derived from taxation and all other sources of revenue and if authority is not vested in said subdivision to obtain the necessary funds with which to function, the peace, health and safety of the community will be endangered. Legislation necessary to determine the facts pertaining to a deficiency and certifying the same to the auditor, and the collection of the same in June, 1925, is absolutely essential to the municipalities and school districts. Therefore this act shall go into immediate effect."

In section 4 of this act may be found the following words:

"Upon the filing with the board of elections before May 1, 1925."

This would further indicate an intent to include "boards of deputy state supervisors of elections" within the phraseology of this act.

It is therefore my opinion that the term "board of deputy state supervisors and inspectors of elections," as used in this act includes such board and the board of deputy state supervisors of elections.

Respectfully,
C. C. CRABBE,
Attorney-General.

2245.

APPROVAL, BONDS OF VILLAGE OF WORTHINGTON, FRANKLIN COUNTY,
\$8,000.00.

COLUMBUS, OHIO, February 28, 1925

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.