

OPINION 65-112**Syllabus:**

1. Where a municipality has fully complied with the provisions of Section 9, Article XVIII of the Ohio Constitution with regard to a proposal for amending its charter, and provided that the limiting time provisions of Section 8 are applicable, it is mandatory for a board of elections to conduct a special election.

2. Where current appropriations of the board of County Commissioners do not anticipate the expenses of a special election, provision must be made therefor through the procedures established by Section 3501.17, Revised Code.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, June 29, 1965

Your request for my opinion relayed the following question:

"The City of Portsmouth is contemplating a Special Election on Tuesday, July 20th, to amend their Charter so as to enact a payroll or income tax. I have estimated the cost of this Special Election at \$5700.00. This Board does not have sufficient funds to conduct this election for the following reasons:

"Our budget and appropriations for 1965 were reduced approximately \$3200.00 due to Scioto County being delinquent on its P.E.R.S. and Industrial Insurance (Workmen's Compensation) to the State of Ohio by approximately \$62,000.00. Other County Officers received reduced appropriations accordingly.

"Upon checking with the County Auditor's Office we find that we could not replace the General Elections appropriations by a charge back to the City of Portsmouth until December. This would come over a month after the General Election.

"Scioto County Commissioners advise that they do not have any money to appropriate to conduct this Special Election.

"In a telephone conversation with the Portsmouth City Manager I asked why this question could not be submitted at the General Election. He replied that the Portsmouth City Schools were submitting an Additional Tax Levy at the General Election for granting increases in teachers' salaries and that they did not want it submitted at the same time.

"THIS IS OUR QUESTION: Does the Board of Elections have authority to refuse to conduct a Special Election? R.C. -3501.17 states, 'The Board of Elections shall not incur any obligation involving the expenditures of money unless there are moneys sufficient in the funds appropriated therefor to meet such obligations'."

Amendments to the charter of a municipality are governed by Article XVIII, Section 9 of the Ohio Constitution which reads as follows:

"Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority there-

of, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of Section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote. (Adopted September 3, 1912.)"

The requirements of Section 8, Article XVIII of the Ohio Constitution relating to the submission of the question of choosing a charter commission are:

"* * *The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid.
* * *"

From the foregoing it appears to be mandatory that a proposal to amend a charter of a municipality be submitted to the electors of the municipality.

Opinion No. 1286, Opinions of the Attorney General for 1952 at page 255 reads in part:

"As to your second question, I call attention again to the language of Section 8, supra. The proposed charter is to be submitted at an election, 'provision for which shall be made by the legislative authority of the municipality, in so far as not prescribed by general law.' What provisions might be made by the general law does not appear. I do not find that any general laws have been enacted that have a bearing on such election, except those provisions which relate to the form of the ballot on submission of questions, and the method of marking.

"Accordingly, the responsibility and burden rest upon the legislative authority of the municipality to carry out the mandate of the constitution, including as an incident provision for what-

ever expense is involved in holding the election and preparing and mailing a copy of the proposed charter to each elector." (Emphasis added)

Section 3501.17, Revised Code, reads in part:

"The expenses of the board of elections shall be paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in the same manner as other county expenses are paid. If the board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections, such board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. Payments shall be made upon vouchers of the Board of elections certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the county auditor. The board of elections shall not incur any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefor to meet such obligations. Such expenses shall be apportioned among the county and the various subdivisions as provided in this section, and the amount chargeable to each subdivision shall be withheld by the auditor from the moneys payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year, the board of elections shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year."

It is inescapable from the plain language of this section that the Board of Elections may not incur an obligation involving the expenditure of money unless funds have been appropriated to meet that expenditure. I am of the opinion, however, that this prohibition as to obligations clearly applies to those expenditures which it is within the discretion of the Board of Elections to make. Where it is the constitutional mandate that an election be held, there is no alternative available to the Board of Elections but to hold the election.

I concur with Opinion No. 1286, supra, that it is the responsibility of the legislative authority of the municipality to provide for whatever expense is involved in holding the election. Section 3501.17, Revised Code, reads in part:

"* * * * *"

"The entire cost of special elections held on a day other than the day of a primary or general election, both in odd numbered or in even

numbered years, shall be charged to the subdivision. * * *

In a case where the Board of Elections was without funds available for the conduct of a special election it would be incumbent upon the legislative authority of the municipality to apply to the board of county commissioners for an additional appropriation of the amount necessary; such amount being entirely chargeable to the subdivision to be withheld by the auditor from the moneys payable thereto at the time of the next tax settlement as provided in Section 3501.17, Revised Code, supra. If the board of county commissioners fails to appropriate such funds then it devolves upon the board of elections to apply to the court of common pleas within the county to have fixed the amount necessary to be appropriated, which amount shall be appropriated.

It is my opinion therefore, that where a municipality has fully complied with the provisions of Section 9, Article XVIII of the Ohio Constitution with regard to a proposal for amending its charter, and provided that the limiting time provisions of Section 8 are applicable, it is mandatory for a board of elections to conduct a special election. I am further of the opinion that where current appropriations of the board of county commissioners do not anticipate the expenses of a special election, provision must be made therefor through the procedures established by Section 3501.17, Revised Code.