

**OPINION NO. 97-057****Syllabus:**

Board of elections members and employees are not subject to the travel approval requirements of R.C. 325.20.

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**To: W. Duncan Whitney, Delaware County Prosecuting Attorney, Delaware, Ohio**  
**By: Betty D. Montgomery, Attorney General, December 29, 1997**

You have requested an opinion whether members or employees of a county board of elections are subject to R.C. 325.20, which, in part, governs the attendance of elected county officers, deputies, and employees at conventions and association meetings at county expense.

Approval of travel expenditures for county personnel is governed by R.C. 325.20, which states in pertinent part:

*(A) Except as otherwise provided by law, no elected county officer and no deputy or employee of the county shall attend, at county expense, any association meeting, convention, or training sessions conducted pursuant to [R.C. 901.10], unless authorized by the board of county commissioners. Before such allowance may be made, the head of the county office desiring it shall apply to the board in writing showing the necessity of such attendance and the probable costs to the county. If a majority of the members of the board approves the application, such expenses shall be paid from the moneys appropriated to such office for traveling expenses.<sup>1</sup> (Emphasis and footnote added.)*

Thus, unless otherwise provided by law, before county moneys may be used to pay the travel expenses of any elected county officer, deputy, or employee for attendance at association meetings, conventions, or certain training sessions, the board of county commissioners must approve such expenditure. Accordingly, members and employees of a county board of elections are subject to R.C. 325.20(A) only if they are elected county officers, deputies, or employees of the county, and provision has not been made elsewhere in the law for the payment of such expenses. *See generally State v. McKelvey*, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967).

Turning now to the first portion of your question, concerning county board of elections members, it is necessary briefly to review the manner in which boards of elections are established. R.C. 3501.06 provides for a board of elections to be established in each county. Each such board

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<sup>1</sup> Division (B) of R.C. 325.20 concerns approval by the board of county commissioners of certain out-of-state travel that "will or may be paid for from funds in the delinquent tax and assessment collection fund created in [R.C. 321.261] or the real estate assessment fund created in [R.C. 325.31]." Because members and employees of a county board of elections would not be using moneys from either of the funds mentioned in R.C. 325.20(B), this opinion will not address the operation of that portion of R.C. 325.20.

consists of four members who are appointed by the Secretary of State, "as the [S]ecretary's representatives," and who serve four-year terms of office. R.C. 3501.06. Elections board members are also subject to suspension or removal by the Secretary of State. R.C. 3501.16.

Concerning the nature of the service rendered by board of elections members, the court in *State ex rel. Columbus Blank Book Mfg. Co. v. Ayres*, 142 Ohio St. 216, 51 N.E.2d 636 (1943) (syllabus, paragraph two), concluded that, "[m]embers of the boards of elections act under the direct control of and are answerable only to the Secretary of State in his capacity as the chief election officer of the state. They perform no county functions and are not county officers." See also *State ex rel. Milburn v. Pethel*, 153 Ohio St. 1, 90 N.E.2d 686 (1950) (syllabus, paragraph three) (board of elections members are officers for purposes of Ohio Const. art. II, § 20). Accordingly, although board of elections members are public officers, they are not county officers and are not elected to office. Board of elections members, therefore, are not "elected county officer[s], ... deput[ies] or employee[s] of the county" for purposes of R.C. 325.20.

Turning now to the question of whether employees of a county board of elections are subject to the requirements of R.C. 325.20, we may begin by noting that a number of prior Attorney General opinions have found board of elections employees to be county employees for particular purposes. See, e.g., 1986 Op. Att'y Gen. No. 86-077 (syllabus, paragraph six) (board of elections employees are in the service of the county and are thus entitled to receive vacation benefits granted by R.C. 325.19 to employees in the county service); 1981 Op. Att'y Gen. No. 81-015 (syllabus, paragraph one) (stating in part, "[t]he employees of county boards of elections are employed in offices of the county service and are thus within the purview of the provisions of R.C. 124.38 and R.C. 124.39(B) regarding sick leave").

Whether or not board of elections employees are county employees for purposes of R.C. 325.20, however, it appears that board of elections employees, as well as board of elections members, are not subject to the travel approval procedures of R.C. 325.20 because the General Assembly has "otherwise provided by law" for the payment of any such expenses. In this regard, let us examine the provisions of R.C. 3501.17, concerning the funding of boards of elections, which states in pertinent part:

(A) 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 chairperson or acting chairperson and the director or deputy director, 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, upon the request of the subdivision, an estimate of

the amount to be withheld therefrom during the next fiscal year. (Emphasis added.)

R.C. 3501.17 thus provides that, in the event of a budgetary dispute between the board of elections and the county commissioners, the court of common pleas shall determine the amount of the board of elections' necessary and proper expenses. The county commissioners are then under a mandatory duty to appropriate to the board of elections the amount determined by the common pleas court to be necessary and proper for the board's operation. *See generally In re Appointment*, No. 90 CA 22, 1990 Ohio App. LEXIS 5129 (Miami County 1990) (explaining the appropriation process established by R.C. 3501.17).

The significance of the unusual budgeting scheme established for boards of elections by R.C. 3501.17 was explained in *State ex rel. Ruggles v. Howser*, No. CA87-11-017, 1988 Ohio App. LEXIS 1678, at \*5-8 (Brown County 1988), as follows:

Once the common pleas court has fixed the amount which it finds to be the board of elections' necessary and proper expenses, R.C. 3501.17 imposes a mandatory duty upon the board of county commissioners to appropriate that amount. If the board of county commissioners does not appropriate the amount the common pleas court has determined to be the election board[']s necessary and proper expenses, then the election board may bring a mandamus action to compel the board of county commissioners to make an appropriation equal to the amount the common pleas court has previously determined to be the election board's necessary and proper expenses.

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[W]e are persuaded it was the Ohio General Assembly's intention that county boards of election be given *independent authority over their own accounts and budget* following the completion of the appropriation process.... By this we mean that once the board of county commissioners has appropriated what has finally been determined to be the board of elections' necessary and proper expenses, *the actual expenditure of those monies lies exclusively within the domain of the board of elections and is not subject to any form of oversight by the board of county commissioners.* (Emphasis added. Various citations omitted.)

The *Ruggles* court thus concluded that the General Assembly intended a board of elections to be independent of the county commissioners in the expenditure of board funds once the appropriation process is complete.

The *Ruggles* court relied, in part, upon the analysis of the court in *State ex rel. Columbus Blank Book Mfg. Co. v. Ayres*, 142 Ohio St 216, 51 N.E.2d 636 (1943), which addressed, in a slightly different context, the independence of boards of elections with respect to their financial transactions. In *Ayres*, it was argued that because board of elections members were county officers and moneys for the board's contracts were paid from the county treasury, the board's contracts were subject to the provisions of former G.C. 5625-33(d) (currently at R.C. 5705.41(D)), which, in part, prohibited a county from entering into any contract without a certificate of available funds issued by the county auditor. In holding that a contract entered into by a board of elections is not subject to former G.C. 5625-33(d), the *Ayres* court concluded, in

part, that board of elections members perform no county functions and are not county officers. The court further suggested that a contrary finding would allow county officers the potential of interfering with the mandatory provisions of the Ohio Constitution concerning the holding of elections.<sup>2</sup> Based upon the constitutional mandates governing the conduct of elections, the *Ayres* court ultimately held, in part, that "all matters pertaining to the conduct of elections are state functions." 142 Ohio St. 216, 51 N.E.2d 636 (syllabus, paragraph one). *See also Stauffer v. Miller*, 79 Ohio App. 3d 100, 102, 606 N.E.2d 1037, 1039 (Washington County 1992) (the mechanism for judicial review of budgetary disputes between the county commissioners and the board of elections "[p]resumably, ... was provided in light of the essential role the board plays in the democratic process and to avoid partisan attempts to stifle its independence").

A like analysis of the functions of boards of elections and the nature of their duties has been adopted by numerous Attorney General opinions, which have concluded in a variety of contexts that boards of elections act independently of the county commissioners' control, review, or oversight in the expenditure of board funds. *See, e.g.*, 1984 Op. Att'y Gen. No. 84-091 at 2-313 ("once the board of county commissioners has appropriated a sufficient amount to meet the necessary expenses of the board of elections, the commissioners have no further control over the expenditures of the board"); 1969 Op. Att'y Gen. No. 69-158 (syllabus) ("[a] board of elections is not required to request a board of county commissioners for a transfer of funds within its appropriation from one class to another class of expenditures");<sup>3</sup> 1932 Op. Att'y Gen. No. 4023, vol. I, p. 154 (syllabus) ("[c]ounty commissioners do not have authority to arbitrarily change the amounts requested and submitted in the budget of the board of elections for the necessary and proper expenses of the board, and substitute their own arbitrary figures in lieu of the amounts requested"); 1930 Op. Att'y Gen. No. 1961, vol. II, p. 887 (syllabus, paragraphs one and two) (board of elections contracts are not subject to the requirements that county contracts generally

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<sup>2</sup> R.C. 3501.17(A) now includes a prohibition against a board of elections' incurring "any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefor to meet such obligations."

<sup>3</sup> 1994 Op. Att'y Gen. No. 94-007 considered whether county entities generally must obtain the approval of the board of county commissioners prior to transferring funds from one appropriation item to another. The opinion set forth the following analysis:

R.C. 5705.40 specifically provides that "[t]ransfers may be made by *resolution* or *ordinance* from one appropriation item to another." (Emphasis added.) This language provides the sole authority for transfers from one appropriation item to another and limits the method by which such transfers may be accomplished. R.C. 5705.40 is plain and unambiguous in this respect: a transfer from one appropriation item to another requires a resolution or ordinance. With respect to appropriations made by a county, therefore, the board of county commissioners alone has the authority to transfer funds among appropriation items.

Op. No. 94-007 at 2-26 through 2-27. Although Op. No. 94-007 rejected the conclusion reached in 1969 Op. Att'y Gen. No. 69-158 as a basis for avoiding the appropriation transfer requirements of R.C. 5705.40 for county entities generally, it did not overrule the conclusion reached in Op. No. 69-158 as it applies to boards of elections.

be advertised, competitively bid, and certified).<sup>4</sup> Similarly, I conclude that, in establishing the scheme for payment of board of election expenses set forth in R.C. 3501.17, the General Assembly has, for purposes of R.C. 325.20, "otherwise provided by law" for the payment of travel expenses of board of elections members and employees.<sup>5</sup>

Based upon the foregoing, it is my opinion, and you are hereby advised that board of elections members and employees are not subject to the travel approval requirements of R.C. 325.20.