

by which there is leased and demised to one L. W. Statler of Dayton, Ohio, for a term of fifteen (15) years, a certain parcel of abandoned Miami and Erie Canal lands in Washington Township, Miami County, Ohio, for agricultural and park purposes. The property covered by said lease is more particularly described as follows:

Beginning at the north line, produced across said canal property, of the lands formerly occupied by D. C. Statler, said line crossing the transit line of the H. E. Whitlock survey of said canal property, at Station 7958 plus 71.8, and running thence southerly with the lines of said canal property 1823.7 feet, as measured along said transit line to the south line produced of the said Statler lands, said line crossing said transit line at Station 7976 plus 95.5, and containing four and one-half (4½) acres, more or less.

The lease of said above described property is subject to certain conditions provided for in said written lease, and the annual rental provided therefor is an annual rental of six per cent (6%) on the sum of six hundred sixty-six dollars and sixty-seven cents (\$666.67), the appraised value of the parcel of land covered by said lease.

Upon examination of the provisions of said lease I find the same to be in conformity with the provisions of Sections 13965, et seq., and with those of the act of the 86th General Assembly, passed March 25, 1925 (111 O. L. page 208). Said lease is therefore approved by me as to its legality and form as is evidenced by my authorized signature on said lease and upon the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

1993.

ELECTION LAW—NO REQUIREMENT FOR REGISTRATION IN CITIES BETWEEN 11,800 AND 16,000 POPULATION—RIGHT OF SUCH CITIES TO REQUIRE REGISTRATION BY ORDINANCE—IF REGISTRATION REQUIRED, COUNTY ELECTION BOARD GETS ADDITIONAL COMPENSATION.

SYLLABUS:

1. *Under the provisions of Section 4785-34, General Code, there is no requirement that provision be made for registration of all qualified electors of a city having a population of less than 16,000 and more than 11,800. Such city may, however, by ordinance elect to become a registration city.*
2. *In the event such city should become a registration city prior to the November, 1930, election, the members and clerk of the board of elections of such county would be entitled to the additional compensation provided for counties containing a registration city as set forth in Sections 4785-18 and 4785-19, General Code, for the year 1930.*

COLUMBUS, OHIO, June 16, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“I will appreciate your official opinion upon the following questions:

Under the old election laws in effect before January 1, 1930, all cities of 11,800 population and over were required to have registration. Under Section

4785-34 of the new election code, which became effective January 1, 1930, cities having a population of 16,000 or more are required to have registration.

According to the Federal census of 1920, the city of T. in S. County, Ohio, had more than 11,800 population but less than 16,000 population. Having more than the required number of residents for registration under the old law, such registration has been in effect. Under the old law board members received \$5.00 per year for each precinct and the clerk \$6.00 per year for each precinct within registration territory, as compensation. Under the new law, compensation for registration territory is fixed at \$2.00 per thousand population for board members and \$3.00 per thousand population for the clerk, per annum.

The S. county board of elections has raised this question—as to whether or not they shall be paid their compensation as registrars for T. between January 1st, 1930, and September, 1930, on the basis of the old law or on the basis of the new law. They feel that the compensation under the new law will not become effective until T. is officially a registration city under the new law and until actual registration is had in October. However, they point out that Section 4785-34 seemingly requires them to handle a registration before the primary this year.

Therefore, I would appreciate specific answers on the following questions: First, shall a city which was a registration city under the old law with a population of more than 11,800 and less than 16,000 be required to have the registration before the 1930 primary under Section 4785-34?

Second, while the census will show T. to be more than 16,000 population, shall it be necessary or permissible for the city of T. to have registration in October prior to the November election of 1930 if the official certification of the 1930 Federal census is not made by that time?

Third, if registration is still required in T. for the August primary under the circumstances described above, what compensation shall be paid to the board members and clerks thereof for their services and how shall such compensation be arrived at?"

Section 4785-34, General Code, provides in part as follows :

"In every city which at the last preceding federal census had, or which at any local, state, or federal census provided by law, shall have reached a population of sixteen thousand (16,000), or more, the board of elections shall establish and maintain, in the manner herein provided, a registration of all the qualified electors of such city. Any city of less than sixteen thousand (16,000) population, may, by ordinance, elect to become a registration city. When such ordinance is adopted the board of elections shall establish and maintain a registration of voters as in the case of other registration cities.

\* \* \* "

The new Election Law, as enacted by the 88th General Assembly, of which Section 4785-34, supra, is a part, expressly repealed Section 4870 of the General Code, which contained the provision that registration shall be required in all cities having a population of 11,800, or more. It follows, therefore, that at the present time there is no requirement as to registration of electors in cities which have, according to the last preceding federal census, a population of more than 11,800 and less than 16,000. Such cities may, however, by ordinance, elect to become registration cities, in which event

the board of elections should establish and maintain a registration of all qualified electors of such city.

You next raise the question of compensation of members of the board of elections of the county in which the city under consideration is situated. Section 4785-18, General Code, provides as follows:

"The annual compensation of members and clerks of the boards of elections shall be determined on the basis of the population of the county according to the next preceding federal census, and shall be paid monthly out of the appropriations made to the board of elections and upon vouchers or payrolls certified by the chairman, or a member of the board designated by it, and countersigned by the clerk or in his absence by the deputy clerk. Upon presentation of any such voucher or payroll the county auditor shall issue his warrant upon the county treasurer for the amount thereof as in the case of vouchers or payrolls for county offices and the treasurer shall pay the same.

The amount of annual compensation of members of the board shall be as follows: twelve dollars for each full one thousand of the first one hundred thousand population; eight dollars for each full one thousand of the second one hundred thousand population; six dollars for each full one thousand of the third one hundred thousand; four dollars for each full one thousand of the fourth one hundred thousand; and three dollars for each full one thousand above four hundred thousand; except that in counties containing a registration city or cities an additional compensation of two dollars for each full one thousand population in such cities shall be allowed; provided, however, that the compensation of a member of the board shall be not less than two hundred dollars and shall not exceed four thousand two hundred dollars annually."

This section was under consideration in Opinion No. 1506, the syllabus of which is as follows:

"In the event the 1930 federal census is completed in the latter part of the year 1930, the compensation of members of boards of elections for the year 1931 should be determined as provided in Section 4785-18, General Code, on the basis of the population of the county according to the 1930 census."

It is obvious that the annual compensation of members and clerks of boards of elections for the year 1930 should be computed upon the basis of the population of the counties according to the 1920 census, notwithstanding the fact that the 1930 census may be completed the latter part of this year. A question presenting some difficulty may arise in the event a city having a population of less than 16,000 should, by ordinance, elect to become a registration city prior to the November, 1930, election. Section 4785-18, *supra*, provides that additional compensation shall be paid to members of boards of elections in counties containing a registration city or cities to the extent of \$2.00 for each full one thousand population in such cities. Section 4785-19 provides for similar additional compensation for clerks to the extent of \$3.00 for each full one thousand population in such cities. This is obviously an additional compensation to be paid on account of the additional services necessary to be rendered by members and clerks of boards in connection with such registration. These additional services resulting from registration are similar to the services rendered by judges and clerks of elections insofar as they are only required in connection with specific elections. A similar situation was considered in Opinion No. 1137, rendered November 1, 1929, to Hon. Paul J. Wortman, Prosecuting Attorney of Montgomery

County, appearing in Opinions of the Attorney General for 1929, Vol. III, p. 1702, the second branch of the syllabus of which is as follows :

“If the federal census for the year 1930 is completed before judges and clerks of elections render their services at elections held in the year 1930, the amount of their compensation under Section 28 of said act will be governed by the population of the county according to the 1930 census.”

In view of the foregoing and in specific answer to your questions, it is my opinion that :

1. Under the provisions of Section 4785-34, General Code, there is no requirement that provision be made for registration of all qualified electors of a city having a population of less than 16,000 and more than 11,800. Such city may, however, by ordinance elect to become a registration city.

2. In the event such city should become a registration city prior to the November, 1930, election, the members and clerk of the board of elections of such county would be entitled to the additional compensation provided for counties containing a registration city as set forth in Sections 4785-18 and 4785-19, General Code, for the year 1930.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1994.

DOG WARDEN—MONEYS NOT TRANSFERABLE FROM GENERAL FUND TO DOG AND KENNEL FUND TO PAY HIS SALARY—WHAT MONEYS DERIVED FROM GENERAL TAXATION TRANSFERABLE TO LATTER FUND.

**SYLLABUS:**

1. *The compensation of a dog warden employed pursuant to the provisions of Section 5652-7, General Code, is payable out of the dog and kennel fund, and in the event there are insufficient moneys in such fund for the payment of such compensation, there is no authority to transfer moneys for such purpose to the dog and kennel fund from the general fund.*

2. *The only circumstances whereby moneys derived from general taxation may be used for the purposes of the dog and kennel fund are set forth in paragraph c of Section 5625-13, General Code.*

COLUMBUS, OHIO, June 16, 1930.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—Your letter of recent date is as follows :

“Among other complications caused by the closing of the Ohio State Bank of this city, which was the depository of the county funds, is one in connection with the salary of the county dog warden. He was employed by the county commissioners on a weekly salary and drew his salary from the dog and kennel fund in accordance with the provisions of Section 5652-13, General Code. The bank having closed, the commissioner, auditor and treasurer are at a loss to know how he can be paid. The commissioners are ar-