

3884.

BOARD OF ELECTIONS—SALARY OF DEPUTY CLERK IN COUNTY CONTAINING CITY WHEREIN ANNUAL REGISTRATION REQUIRED—SALARIES OF ASSISTANT CLERKS—WHERE TWO OR MORE CITIES IN COUNTY—SALARY OF DEPUTY CLERK—BOARD MAKES OWN EMPLOYMENT.

1. *The salary of the deputy clerk of the county board of elections in a county containing a city wherein annual registration of electors is required by law should be not to exceed two hundred dollars per month, and the one or more assistant clerks mentioned in 4877 G. C., if employed in a county having a city where registration is required, may be paid not to exceed one hundred and fifty dollars per month by the county board of elections.*

2. *The maximum compensation that may be paid to the deputy clerk of the county board of elections in a county containing two or more cities in which registration is required by law, is two hundred dollars per month (4799), and the maximum compensation which can be paid to assistant clerks of boards of elections in counties having a city or cities where registration is required shall not exceed one hundred and fifty dollars per month for each assistant clerk employed in the manner set out in section 4877 G. C. (Section 4802 G. C.)*

3. *The county board of elections, of its own motion, may make those employments which it is permitted to make under specific sections of the law, without any other board or person passing thereon.*

COLUMBUS, OHIO, January 6, 1923.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for an opinion upon the following:

1. In view of the language of section 4788 G. C. and the two clearly expressed maximums mentioned in sections 4799 and 4877 G. C., what is the maximum of compensation that can be legally paid to the deputy clerk and to the assistants to the clerk of the board of deputy state supervisors and inspectors of elections of a county which contains only one registration city, and that a city wherein *annual* registration of the electors is required by law?

2. What is the maximum compensation that may be paid the deputy clerk and the assistant to the clerk in a county containing two or more cities in which registration is required by law?

3. May a board of deputy state supervisors of elections in a county containing only one quadrennial registration city, or in a county containing no registration city, of its own motion, employ and certify payment to a deputy clerk and to assistants to the clerk? If so, what is the maximum that may legally be paid in such instances?"

In your communication you say also:

"We are enclosing herewith copies of opinions of city solicitor and prosecuting attorney of the city of Columbus and Franklin County respectively on the above matter."

Receipt of these two opinions upon these questions from the law departments named is acknowledged and the same have been carefully examined. In addition to carefully examining the opinion of the city attorney and the opinion of the prosecuting attorney named above, this department has also examined carefully a former opinion issued by this department (No. 2488) on October 18, 1921, inasmuch as the city attorney in his opinion makes reference to Opinion 2488 of this department and quotes in a limited way therefrom.

Taking up first what this department may have said in Opinion 2488 (now printed at page 927, Vol. 2, Opinions of the Attorney General for 1921), it will be noted that the question before this department at that time was upon the case of a county in which there was no registration city, and the ruling appearing in Opinion 2488 had in mind only a county in which there is no registration city, as is stated in the first branch of the syllabus, and therefore the holding in Opinion 2488, issued by this department in 1921, would appear to have but little bearing upon the question at hand where the matter involved is the employment of the deputy clerk and the assistant to the clerk of the board of deputy state supervisors and inspectors of elections in a county where registration is required in a city located therein.

A careful reading of the opinion of the city attorney and the prosecuting attorney upon these questions indicates a constant attempt to show the "legislative intent," that is, what did the law-making body intend that the deputy clerk and the assistants to the clerk of the board of deputy state supervisors and inspectors of elections should receive as compensation. It would appear that this is the crux of the matter and the question upon which the Bureau of Inspection and Supervision of Public Offices has differed from the municipal and county law departments located in the city of Columbus.

The legislative intent in the case at hand, as regards these statutes, can be ascertained by examining into the history of the legislation as to the time when the sections which apply were amended and the attendant circumstances at that time.

"The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and the state of the law existent at the time of their enactment. The words of a statute must be taken in the sense in which they were understood at the time the statute was enacted. ***" (25 Ruling Case Law "Statutes" page 215.)

"In the interpretation and construction of statutes the primary rule is to ascertain and give effect to the intention of the legislature. As has been frequently stated in effect, *the intention of the legislature constitutes the law*. All rules for the interpretation and construction of statutes of doubtful meaning have for their sole object the discovery of the legislative intent and they are valuable only in so far as in their application they enable us the better to ascertain and give effect to that intent. ***" (25 Ruling Case Law "Statutes" page 216.)

"When the intention of a statute is plainly discernible from its provisions, that intention is as obligatory as the letter of the statute, and will even prevail over the strict letter." (25 Ruling Case Law, p. 222.)

For a more exhaustive discussion of the legislative intent see Opinions of the Attorney General, Vol. 1, 1921, pp. 693 and 694.

The sections to which you invite attention in your request are sections 4788, 4799 and 4877 G. C., which read at the present time as follows:

"Sec. 4788. In each county of the state which contains a city wherein annual general registration of the electors is required by law, or which contains two or more cities in which registration is required by law, there shall be a board of deputy state supervisors and inspectors of elections, consisting of four members who shall be qualified electors of the county."

"Sec. 4799. The deputy clerk of the board of deputy state supervisors and inspectors shall perform such duties and receive such compensation, not exceeding one hundred and fifty dollars, and in all counties having cities where registration is required, not exceeding two hundred dollars each month, as shall be determined by the board."

"Sec. 4877. When necessary the board may employ a deputy clerk; also one or more assistant clerks at a salary of not to exceed the rate of one hundred dollars and in all counties having cities where registration is required, not exceeding one hundred and fifty dollars per month each and prescribe their duties. The period for which they are so employed must always be fixed in the order authorizing their employment, but they may be discharged sooner at the pleasure of the board. Such deputy clerk and assistants shall take the same oath for the faithful performance of their duties as required of the clerk of the board. The compensation of the deputy clerk and his assistant clerks shall be equally divided between the city and county."

It will be noted that nothing is said in 4788 G. C. about the salary of the deputy clerk or the assistant clerks, so that the sections before us for legal construction are 4799 and 4877 G. C. These two sections were enacted as they appear today by the 82nd General Assembly in House Bill 195 (Mr. Israel) and this act was filed in the office of the Secretary of State on April 3, 1917, without objection on the part of the governor or his approval thereto. The title of House Bill 195 (107 O. L., 690) is "An Act to amend sections 4709, 4860, 4877, and 4944 of the General Code, relating to *the compensation of election judges, clerks and deputy clerks and assistants.*" Thus it is clear that the General Assembly had before it in House Bill 195 the question of the compensation of deputy clerks and assistants in the employ of boards of election. Of the four sections comprising H. B. 195, it is not necessary to consider sections 4860 or 4944, since these two sections have no bearing upon "the compensation of deputy clerks and assistants, the sections of House Bill 195 bearing upon the compensation of deputy clerks and assistants being 4799 and 4877. Whatever appears in 4799 and 4877 as enacted in House Bill 195 (107 O. L., 690) or what may have been the legislative intent as to the meaning of these two sections upon compensation of the deputy clerk and assistants would be the law today, for it frequently has been held that *the legislative intent is the law* where the same can be ascertained.

The expression of the 82nd General Assembly upon this question of the compensation of the deputy clerk and the assistants employed by a board of deputy state supervisors and inspectors is the last expression of the General Assembly upon this question for but few changes were made in the election laws of the state in the succeeding two General Assemblies, which enacted 108 O. L., and 109 O. L., respectively. In the 84th General Assembly there was prepared and introduced an entirely new election code consisting of 415 sections of proposed law without Code numbers but the measure known as H. B. 337, was never passed in either house of the Legislature.

Section 4799, as is read prior to its amendment in 1917 (107 O. L., 690) was as follows:

"The deputy clerk of the board of deputy state supervisors and inspectors shall perform such duties and receive such compensation, not exceeding one hundred and fifty dollars each month as shall be determined by the board." (98 O. L., 288.)

When H. B. 195 was introduced by Mr. Israel, section 4799, in his bill, read as follows:

"The deputy clerk of the board of deputy state supervisors and inspectors shall perform such duties and receive such compensation, not exceeding *** two hundred dollars each month as shall be determined by the board."

Thus when the bill was introduced, 4799 provided that the deputy clerk of the board of deputy state supervisors and inspectors in any county of the state where such a board would exist might receive as compensation a sum up to two hundred dollars per month, the same to be determined by the board. The bill was introduced on January 25, 1917, Ohio House Journal (Vol. 107, p. 94), was referred to the Committee on Privileges and Elections in the House of Representatives on January 29, 1917, and was reported out by that committee on January 31, 1917, with the following amendments:

"In line 6 after 'ceding' strike out the asterisks and the words 'two hundred' and insert the following words: 'one hundred and fifty' and in line 6 after the word 'dollars' insert the following: 'and in all counties having cities where registration is required, not exceeding two hundred dollars.'"

Thus it is clear that after the author had provided in his bill a flat salary of two hundred dollars each month for the deputy clerk of the board of deputy state supervisors and inspectors, the Committee on Privileges and Elections, of its own volition, amended 4799 G. C. in the manner above indicated, and clearly showed that it was the intent that "in all counties having cities where registration is required" there should be an exception and that the salaries in such counties should be "not exceeding two hundred dollars," but the two hundred dollars appearing in the bill as it affected other counties, where registration did not obtain, was reduced to one hundred and fifty dollars. Thus we have in the action taken by the committee, and later adopted by the law-making body, a clear indication as to what the legislative intent may have been. H. B. 195 was read the third time in the

House of Representatives on February 8, 1913, and Mr. Mansfield "moved to refer the bill to a select committee of one with instructions to amend as follows: Strike out lines 4, 5, 6 and 7, being section 4799. Also strike out in line 16 (4877 G. C.) 'and in all counties having cities where registration is required not exceeding one hundred and fifty dollars.'" This amendment to strike out 4799, as proposed by the Committee on Privileges and Elections, was defeated in the House of Representatives by a vote of 72 to 33, another clear indication that the wording proposed by the Committee on Privileges and Elections in 4799 should obtain rather than old 4799, and that there should be an exception in cases of those "counties having cities where registration is required;" The proposed amendment from Mr. Mansfield from the floor having been defeated by more than two to one, the bill was placed upon its passage and was passed by a vote of 97 to 14, Ohio House Journal 107, p. 190. H. B. 195 was sent to the Senate where it was amended slightly in section 4877 but not in 4799, which section is now being discussed, the subject therein being the salary of the deputy clerk of the board of deputy state supervisors and inspectors of elections. For the proceedings in the Ohio Senate on H. B. 195, see Ohio Senate Journal, Vol. 107 (1917) at the following pages: 158, 173, 241, 284, 172, 182, 285, 460, 551 and 555. Section 4877, supra, is the section which gives the board authority to employ a deputy clerk. Then following 4877 G. C. comes 4799 G. C., stating what the salary of the deputy clerk may be. Investigation will show that H. B. 195, affecting persons employed in boards of elections where there were annual registration cities, was presented by a member of the General Assembly from an urban county; that H. B. 195 was sponsored and supported by practically all of the legislators from the cities where registration obtained, this being shown in the roll calls; that the purpose directly before the General Assembly was an increase of salary for the deputy clerk in counties where registration obtained and also provision in 4877 for the employment of assistant clerks; that the General Assembly, after full discussion and amendment in both Houses of H. B. 195, passed the same in regular manner after amendment, showing intent, with the result that it reads as it does today, that the deputy clerk "in all counties having cities where registration is required" may be paid not exceeding \$200.00 each month, as shall be determined by the board. The question has been raised as to whether the words "in all counties having cities where registration is required" does not mean only those counties which have more than one city where registration is required, there being a few of such counties in the state similar to Stark, Lorain and Butler Counties. It is not believed that this narrow view of the meaning of this expression was what was intended by the General Assembly. It is apparent that the word "cities" could not be well used in this sentence in 4799 unless "county" should also be made plural, that is, "counties," so as to fit in with "cities," the two words being separated merely by the word "having." So that the expression "in all counties where city registration is required" as it appears in 4799 G. C., means "in any county having a city where registration is required," and two registration cities are not required in the county in order that the deputy clerk of the board of deputy state supervisors and inspectors shall have the salary mentioned in 4799 G. C. When the General Assembly had H. B. 195 before it, sections 4799 and 4877 G. C. were part of the same act and the legislature in legislating upon 4877 G. C. felt that it was enacting law which would fit into 4799 G. C., that is, that the part mentioned in 4877 is the part which the legislature had before it in 4799.

The same reasoning could be shown as regards 4877 G. C., the second portion of H. B. 195, bearing upon the employment of assistant clerks. Legislative intent

as regards 4877 enacted in 1917 can be established in the same manner as it is with 4799, since the two sections are part of the same bill and went through the same channels of legislation and are reported upon the same pages of legislative procedure as set forth in the House Journal and Senate Journal of the 82nd General Assembly, 107 O. L. When the 82nd General Assembly had before it H. B. 195, old section 4877 read as follows:

"When necessary, the board may employ a deputy clerk and one or more clerks as temporary assistants of the clerk at a salary of not to exceed the rate of one hundred dollars per month each and prescribe their duties. The period for which they are so employed must always be fixed in the order authorizing their employment, but they may be discharged sooner at the pleasure of the board. Such deputy clerk and assistants shall take the same oath for the faithful performance of their duties as required of the clerk of the board."

In H. B. 195, as originally introduced, section 4877 was amended in only one particular and that was that after the words "at the rate of one hundred" there was inserted the words "and fifty," so that the bill as introduced merely provided that the board may employ a deputy clerk and one or more clerks as temporary assistants to the clerk at a salary of not to exceed the rate of one hundred and fifty dollars per month each and prescribe their duties. Thus we find the old section 4877, and in H. B. 195 as it read when introduced into the legislature, that the word "temporary" obtained in both, but the legislature of its own volition dropped the word "temporary" in 4877 and made the expression in the law to read "also one or more assistant clerks." Here is another illustration of legislative intent as to how section 4877 should finally appear when enacted into law by the 82nd General Assembly. In old section 4877 and in H. B. 195, as introduced in the legislature, there was no semi-colon after the words "deputy clerk" as now appears in 4877 G. C.; the result being that the salary mentioned in 4877 G. C. runs to the assistant clerks and not to the deputy clerks, whose salary is provided for in 4799. That H. B. 195 was carefully considered by the Senate as well as by the House of Representatives is further indicated by the fact that on Thursday, February 15th, Senator

"Timby moved that H. B. 195—Mr. Israel, be referred to the committee on Fees and Salaries, on which the yeas and nays were demanded, taken and resulted—yeas 9, nays 24, ***. So the motion was disagreed to.

On motion of Mr. Harding H. B. 195—Mr. Israel, was referred to the committee on Privileges and Elections."

Thus you see that as soon as the measure come from the House of Representatives into the Senate there was immediately a contest as to what committee should consider it, Mr. Timby desiring that it go to the committee on Fees and Salaries, of which committee he was a member (Senate Journal Vol. 107, p. 172.) The significant amendment made in the Senate by the standing committee on Privileges and elections was the following:

"In line 15, cut out the words 'or more clerks as temporary assistants of the clerk' and in lieu thereof fill in 'also one or more assistant clerks'."

This dropping of the word "temporary" was by the Senate Committee on Privileges and Elections, whereupon, the amendments being agreed to, the bill was read

the third time and on March 1st was passed in its amended form by a vote of 31 to 2. We thus see by a careful analysis of the Senate Journal of the 82nd General Assembly that these two sections of the law, relative to the salary of the deputy clerk and the salaries of the assistant clerks were carefully considered and whatever appears in these two sections as they read today, not having been disturbed since 1917, must necessarily be the law, and motions, amendments, roll calls and legislative procedure surrounding the enactment of H. B. 195 in 1917, show very clearly that the General Assembly gave the bill very careful consideration, amending it several times and apparently made it into law with the full understanding and legislative intent that the salary of a deputy clerk in a city wherein annual registration of electors is required by law should be not to exceed two hundred dollars each month and that the one or more assistant clerks mentioned in 4877 should receive not to exceed one hundred dollars per month, but in counties having cities where registration is required, one hundred and fifty dollars per month might be paid to assistant clerks in the boards of elections.

The same legislature which enacted H. B. 195 also enacted the absent voters' law (107 O. L., 52) as it appears today, and it is believed that the General Assembly had in mind, in placing this additional work upon the office of the clerk of the board of elections that in the larger counties where there are registration cities and there is a registration blank to be filled out before the voter can secure his absent voters' ballot, this additional work should be compensated for and that assistant clerks should be provided at a larger pay in these counties containing large registration cities as compared with the rural counties. In a county containing no registration city the absent voter applies for his ballot and the same is sent to him without any of the work necessary in the registration blank; again there is more absent voting done in these larger cities than there is in the rural counties, for the reason, first, there is a very much larger population, and second, the employment and business in a city are such that there is a great deal more absence from home on the part of the voter than where he lives in a rural county. These facts are apparent to any one and it is possible that the General Assembly in 1917 had this in mind when it was carefully considering the provisions of H. B. 195. There is little merit to the argument that a county should have two registration cities in order to have this increased pay for the deputy clerk or the assistant clerks in the board of elections, because if this argument obtained then these clerks in a county like Lorain County would receive such increased pay because the two registration cities of Lorain and Elyria were located therein, both quite minor as regards population and work in the board of elections, when compared with Franklin County where but one registration city exists. Similarly the employes in the board of elections in Cuyahoga County would not get this increased pay on account of the large city of Cleveland but because of the minor registration cities surrounding Cleveland. In Hamilton County the employed personnel in the board of elections would not receive increased compensation because of Cincinnati, but merely because the minor registration city of Norwood was located in the same county. It can hardly be assumed that it was the intent of the General Assembly that a board of elections, having two minor registration cities, should receive this increased compensation merely because they had two registration cities (aggregating less than 60,000 population) and that a lesser compensation should obtain in a county where there was one registration city as in Franklin county where Columbus has 237,000 population, or in Montgomery County where Dayton has 152,000 population.

Answering your second question the same rule would apply as in the first, since the General Assembly has apparently not differentiated between the board of state

supervisors and inspectors of elections in a county where there is one registration city as against a county where there might be two or more registration cities. That is to say, the maximum compensation that might be paid to the deputy clerk in a county containing two or more cities in which registration is requested by law is two hundred dollars per month and the maximum compensation which shall be paid assistant clerks of boards of elections in counties having a city or cities where registration is required will be one hundred and fifty dollars per month for each assistant clerk employed in the manner set forth in 4877 G. C.

Bearing upon your third question, it is noted that its tenor is upon those counties which do not have boards of elections known as deputy state supervisors and inspectors of elections, a title which goes to only a certain number of the counties of the state, the remainder of the counties having their election matters supervised by a board known as the deputy state supervisors of elections. In other words, the matter contained in your third question has but little relation if any to the first two questions.

A careful analysis of your third question shows that in the manner in which it is written it contains at least nine distinct questions by having appear in such question the words "and", "or" and "such instances"; thus the "instances" are a number of different ones and the question is too generally put to give an intelligent answer which would govern in all "instances." That portion of your question which speaks of what the board of elections in a county (under whatever name such board may be known) may do "of its own motion" may be answered by saying that county boards of election may employ their personnel without consulting any other board or body, but such employments by both kinds of boards of elections are limited to the employments which appear specifically in various sections of the law. However, if this question was answered directly in the affirmative, such answer would carry an affirmative answer on at least four other questions, which should have special treatment with full facts as to the "instances" which might be met. It is suggested that should the Bureau desire this general third question answered in detail that the same be subdivided into the nine questions which are hidden in the general question. It is pertinent to add at this time that questions as to the salaries of these various employes would be settled beyond doubt if the General Assembly at its present session would clarify those sections of the election laws as to personnel authorized and the salaries which might be paid.

In reply to your inquiry you are therefore advised that it is the opinion of this department:

1. The salary of a deputy clerk of the county board of elections in a county containing a city wherein annual registration of electors is required by law, should be not to exceed two hundred dollars per month, and the one or more assistant clerks mentioned in 4877 G. C., if employed in a county having a city where registration is required, may be paid not to exceed one hundred and fifty dollars per month by the county board of elections.

2. The maximum compensation that may be paid to the deputy clerk of the county board of elections in a county containing two or more cities in which registration is required by law, is two hundred dollars per month (4799), and the maximum compensation which can be paid to assistant clerks of boards of elections in counties having a city or cities where registration is required shall not exceed

one hundred and fifty dollars per month for each assistant clerk employed in the manner set out in section 4877 G. C. (Sec. 4802 G. C.)

3. The county board of elections, of its own motion, may make those employments which it is permitted to make under specific sections of the law, without any other board or person passing thereon.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3885.

BOARD OF EDUCATION—MAY CONSTRUCT AT ITS OWN EXPENSE
 SIDEWALKS—SAID BOARD MAY NOT COMPEL CITY TO MAKE
 IMPROVEMENT.

1. *Under the provisions of section 7620 G. C., the board of education of a city school district, may construct at its own expense cement sidewalks on the streets abutting school premises used exclusively for school purposes.*

2. *In the absence of facts imposing a duty upon the municipality to construct or improve sidewalks upon streets abutting upon school property, a board of education may not compel the city to exercise its discretion to proceed to such an improvement.*

COLUMBUS, OHIO, January 6, 1923.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date which reads as follows:

“We respectfully request that you furnish this department with your written opinion upon the questions contained in the enclosed letter from M. Ray Weikart, City Solicitor of the City of Springfield, Ohio.”

The letter from Mr. Weikart reads as follows:

“Will you kindly secure for me the opinion of the Attorney General upon the following questions, to-wit:

Question No. 1. Can the board of education of a city school district lawfully construct cement sidewalks, at its own expense, on the streets abutting school premises used exclusively for school purposes?

Question No. 2. Can the board of education of a city school district compel the city corporation to construct cement sidewalks on streets abutting school premises used exclusively for school purposes?

(a) When the city corporation has, by ordinance, required all property owners on said street to construct such sidewalks within a time specified, and has stipulated that if said sidewalks are not so constructed within such time specified, that same will be constructed by the city and the cost and