

1992

A BOARD OF ELECTIONS MAY ENTER INTO A LEASE FOR A BUILDING TO BE USED FOR THE STORAGE OF VOTING MACHINES—§§3501.11(C), 3501.17, 3507.03, 3507.12, R.C.

SYLLABUS:

A board of elections may enter into a lease for a building to be used for the storage of voting machines, authority for such being reasonably implied from the provisions of division (C) of Section 3501.11, Revised Code, and from the provisions of Sections 3501.17, 3507.03, and 3507.12, Revised Code.

Columbus, Ohio, February 6, 1961

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“This office is in receipt of the following question:

“Which of two public bodies, the Board of Elections of Mahoning County, or the Board of County Commissioners of Mahoning County, has the legal power and authority to enter into a lease for a building to be used for the storage of voting machines?”

“This office is aware of the following statute provisions:

“Revised Code 307.02, which deals with the broad powers of County Commissioners in purchasing, leasing, etc. of property for courthouse and *other necessary buildings* for county use.

“Revised Code 3501.10, which concerns authority of Board of Elections to provide *offices* for itself.

“Revised Code 3501.17, which deals with *expenses* of Board of Elections.

“Revised Code 3507.12, the last sentence of which reads, ‘* * * All machines shall be carefully stored as soon after the close of the elections as possible, in a dry, safe, and suitable place.’”

Section 307.02, Revised Code, referred to in your request, gives a board of county commissioners general authority to lease necessary build-

ings. I am, however, unable to find any specific statute authorizing the board to lease buildings for the use of the board of elections.

Section 3501.10, Revised Code, referred to in your request, provides:

“The board of elections shall, as an expense of the board, provide suitable rooms for its office and records and the necessary and proper furniture and supplies for such rooms. * * *.”

Authority to provide suitable rooms would appear to include the power to rent such rooms and such conclusion is borne out by the part of Section 3501.17, Revised Code, reading:

“* * * the expenditures for the *rental*, furnishing, and equipping of the office of the board * * * shall be paid in the same manner as other county expenses are paid.

“* * * * * * * *”

(Emphasis added)

As suggested in your request, there is a question as to whether a building used for the purpose of storing voting machines may be considered “rooms for its office and records” within the purview of Section 3501.10, *supra*. While I do not here rule out the possibility that the building may be so considered, I do not deem it necessary to further pursue this aspect as I believe that the instant question may be answered from other statutes.

Another provision to consider in this question is that contained in Section 3501.11, Revised Code, and reading:

“Each board of elections * * * shall:

“* * * * * * * *”

“(C) *Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;*

“* * * * * * * *”

(Emphasis added)

There appears to be no doubt that voting machines are “equipment used in registration, nominations, and elections.” Also, the “preservation, and maintenance” of machines would require that space be obtained to store the machines, and authority to rent for such a purpose might, therefore, be reasonably implied. Regarding implied powers, it is stated in 32 Ohio Jurisprudence, Section 75, page 936:

“The rule in respect of implied powers is that, in addition to the powers expressly given by statute to an office or board of officers, he or it has, by implication, such additional powers as are necessary for the *due and efficient exercise* of the power expressly granted, or as may be fairly implied, from the statute granting the express powers. * * *” (Emphasis added)

I am of the opinion, however, that the question is better answered by Sections 3507.03 and 3507.12, Revised Code, which give the board of elections the clear duty to take custody of all voting machines and to store them in a suitable place. As to custody, Section 3507.03, *supra*, provides:

“* * * the board of elections shall be charged with the custody of all voting machines acquired by the county or by a municipal corporation within the county, and shall see that all such machines are kept in proper working order and in good repair. * * *”

As to storing of machines, Section 3507.12, *supra*, provides:

“* * * All machines shall be carefully stored as soon after the close of the election as possible in a dry, safe, and suitable place.”

Being given the duty to store voting machines in a suitable place, the board of elections must have the power to provide such suitable place in order to carry out the duty. Thus, although I have been unable to find any statute specifically stating that the board may rent a building to store voting machines, I deem that such power is necessarily incidental to the board's duty to take custody of, and to store, voting machines, and may, therefore, be reasonably implied (See 32 Ohio Jurisprudence, *supra*).

Further, it will be noted that under Section 3501.17, *supra*, the board of county commissioners is required to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections, and that payments of expenses of the board are made upon vouchers of the board of elections certified to it by its chairman and the clerk, or deputy clerk, upon warrants of the county auditor. Thus, the board of county commissioners has no connection with said expenditures. The provision of Section 3501.17, *supra*, here pertinent, reads:

“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 obligations involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefor to meet such obligations. * * *

Finally, the legislature has seen fit to charge the board of elections with the custody, care, and storage of voting machines but has not vested any such duties in the board of county commissioners. Thus, I do not believe that the legislature intended that the board of elections should be forced to depend on action by the board of county commissioners to obtain storage space for voting machines. Also, while pursuant to Section 307.02, Revised Code, a board of county commissioners may lease necessary buildings, said statute does not require that all leases of buildings be made by the county commissioners.

Accordingly, it is my opinion and you are advised that a board of elections may enter into a lease for a building to be used for the storage of voting machines, authority for such being reasonably implied from the provisions of division (C) of Section 3501.11, Revised Code, and from the provisions of Sections 3501.17, 3507.03, and 3507.12, Revised Code.

Respectfully,

MARK McELROY

Attorney General