

978.

APPROVAL, BONDS OF MUHLENBERG TOWNSHIP RURAL SCHOOL DISTRICT, PICKAWAY COUNTY, \$1,140.95, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, December 8, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

979.

APPROVAL, BONDS OF UPPER TOWNSHIP RURAL SCHOOL DISTRICT, LAWRENCE COUNTY, \$9,166.95, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, December 8, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

980.

ELECTIONS—AUTHORITY OF BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS TO INVESTIGATE ELECTION OFFENSES—PROVISION FOR EXPENSES—SECTION 4821 CONSTRUED.

SYLLABUS:

The only expenses authorized to be incurred by the board of deputy state supervisors of elections for the investigation of violations of the election laws under section 4820 G. C. are those of the mere preliminary examination on the part of the board, and when an offense against the election laws is found to be present, to order the prosecution thereof.

Under section 4821 G. C. provision is made for the expenses duly authorized and incurred in the investigation and prosecution of offenses against the laws relating to the registration of electors, the right of suffrage and the conduct of elections, but is limited in its provision as to necessary expenses to counties containing "annual general registration of cities."

COLUMBUS, OHIO, December 10, 1923.

HON. THAD H. BROWN, *Secretary of State and State Supervisor of Elections, Columbus, Ohio*

Dear Sir:—This will acknowledge receipt of your letter of recent date, as follows:

“Enclosed herewith is a letter from the prosecuting attorney of Ross County inquiring as to certain expenses for violation in election laws under section 4820 General Code.

Will you kindly furnish us with an opinion in this matter?”

The letter from Mr. Marshall G. Fenton, prosecuting attorney of Ross County, is as follows:

“Enclosed is copy of letter received by me this day from the board of elections of Ross County.

I would appreciate very much if you can give me any information relative to whether or not the county is liable for the above expenses where they hold an investigation for violation of election laws under 4820 G. C.

I note that section 4821 provides for all proper and necessary expenses and how they shall be paid, but in the case under consideration it is more than likely that the expenses will far exceed the amount available in the county treasury.

You will recall that a delegation of Frankfort citizens called on you relative to irregularities in the election booth at Frankfort on the 6th day of November, 1923. They have formally filed a complaint before the election board, and the county board has set November 20th, 1923, as the date when this formal hearing will take place. Naturally, the question arises as to the fees of witnesses, mileage, stenographic notes of the proceedings and other similar expense.

Your early attention to the enclosed request will be very much appreciated, as the report eventually must be filed with you as state supervisor of elections, and with me as prosecuting attorney.”

This letter also had attached thereto a copy of one from the board of deputy state supervisors of election for Ross County, as follows:

“A document has been filed with us, of which we inclose a copy herewith, complaining of alleged irregularities in the election in the village of Frankfort, Ohio. We have set the hearing on this complaint for November 20, 1923, at the council chamber in the city of Chillicothe, Ohio, at 9 o'clock A. M. Our board desires to have your opinion upon the following matters:

1. What provision, if any, is made in the laws of Ohio for the payment of expenses of such an investigation?
2. Is there any provision for the payment of witness fees, mileage, stenographer's fees, for the expense of a stenographer to take the testimony?
3. What remedies, if any, does the law provide if the alleged irregularities complained of in this complaint are proven?
4. If there are any provisions for the payment of expenses, what expenses, if any, other than those enumerated above are included as proper to be paid from the county treasury?

Section 4819 G. C. provides for the general duties of deputy state supervisors of elections, as follows:

"The deputy state supervisors for each county shall advertise and let the printing of the ballots, cards of instruction and other required books and papers to be printed by the county; receive the ballots from the printer, and cause them to be securely sealed up in their presence in packages, one for each precinct, containing the designated number of ballots for each precinct, and make the necessary indorsements thereon as provided by law; provide for the delivery of ballots, poll books and other required books and papers at the polling places in the several precincts; cause the polling places to be suitably provided with booths, guard rails and other supplies, as provided by law, and provide for the care and custody of them during the intervals between elections; receive the returns of elections, canvass them, make abstracts thereof, and transmit such abstracts to the proper officers at the times and in the manner provided by law, and issue certificates to persons entitled to them."

Section 4820 G. C. provides for the investigation by the board of deputy state supervisors of violations of election laws, as follows:

"The board of deputy state supervisors of each county shall investigate all irregularities or non-performance of duty by any election officer that may be reported to it, or that comes to its knowledge and report the facts to the state supervisor of elections and to the prosecuting attorney of the county. The state supervisor or the board of deputy state supervisors shall order the prosecution of all offenses for violations of this title or any of the laws of the state relating to the conduct of elections."

The provision for the payment of the necessary expenses of the board of deputy state supervisors contained in section 4821 is as follows:

"All proper and necessary expenses of the board of deputy state supervisors shall be paid from the county treasury as other county expenses, and the county commissioners shall make the necessary levy to provide therefor. In counties containing annual general registration cities, such expenses shall include expenses duly authorized and incurred in the investigation and prosecution of offenses against laws relating to the registration of electors, the right of suffrage and the conduct of elections."

It will be noted that the last above mentioned section provides:

"In counties containing *annual general registration*, such expenses shall include expenses duly authorized and incurred in the investigation and prosecution of offenses against laws relating to the registration of electors, the right of suffrage and the conduct of elections."

It may be observed that section 4820, above mentioned, provides generally for the investigation of violations of election laws by the board "that may be reported to it, or that comes to its knowledge and report the facts to the state supervisor of elections and to the prosecuting attorney of the county." The latter part of the above section then provides that either the state supervisor or the board of deputy state supervisors shall order the prosecution of all offenses for violations of this title or any of the laws of the state relating to the conduct of elections.

It would seem, therefore, that the legislature intended to limit the investigation by the deputy state supervisors to an examination into the preliminary facts and if

an offense against the election laws was found to be present, to order the prosecution thereof.

In section 4821 provision is made for the expenses duly authorized and incurred in the investigation and prosecution of offenses against laws relating to the registration of electors, the right of suffrage and the conduct of elections, but the latter section seems to limit this provision as to expenses of prosecution to counties containing 'annual general registration cities.'

We desire to call attention to an opinion of the Attorney-General, 1912, volume 1, page 309, in which the following language is used:

"It will be observed that section 4821, General Code, provides that all necessary and proper expenses of the board shall be paid from the county treasury and that the county commissioners shall make the necessary levy therefor. This expense shall include expenses incurred in investigation and prosecution of violations of election and registration laws in counties containing annual general registration cities. This provision does not affect the provisions of sections 5052 and 5053, General Code, as to the payment of proper and necessary expenses from the county treasury and the right of the county to charge back such expense.

The expenses incurred in the investigation and prosecution of violations of election laws should be paid in the same manner as other general expenses of a particular election. For violations of election laws at elections in even-numbered years, such expense shall be paid by the county and not charged back, and in odd-numbered years shall be paid by the county and charged back."

It was held in an opinion of the Attorney-General, 1913, volume 2, page 1402, that:

"The use of the phrase 'as other county expenses' means that election expenses, not otherwise provided for, shall be paid from the county treasury upon the order of approval of the board of county commissioners, as other claims against the county."

We think it was the intention to limit this provision to "election expenses" proper, which would not include an investigation by the deputy state supervisors of elections for violation of the election laws, in our judgment.

Section 2460 G. C. provides the manner of allowing claims against the county, as follows:

"No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."

It is significant to note that section 4800 G. C. provides as follows:

"The board of deputy state supervisors and inspectors shall investigate and prosecute all violations of the laws relating to the registration of electors, the right of suffrage and the conduct of elections, and make report thereof to the state supervisor and inspector. When approved by the state supervisor and inspector and by a vote of a majority of its members, each such board may incur any expense necessary to the conduct of such *investigations and prosecutions.*"

It will be noted from the above that the authority in this section is more comprehensive than the authority given to the board of deputy state supervisors in section 4820 G. C. supra. In the latter section if prosecution for offenses relating to the conduct of elections is to be had, it is done upon the order of the board of deputy state supervisors or the state supervisor of elections, while in the former section (section 4800) the board of deputy state supervisors and inspectors of elections have authority to *investigate and prosecute*, and provision is made for the expenses incident thereto. We fail to find any similar provision for the expenses of the deputy state supervisors.

It is my opinion, therefore, that the only expenses authorized to be incurred by the board of deputy state supervisors of election, if any, are those of the mere preliminary examination on the part of the board, but which would not include the expenses of an extensive investigation or prosecution. The expenses, if any, should be incurred by the one ordered to prosecute the offenses, which evidently would be the prosecuting attorney of the county.

In answer to your second question, we fail to find any provisions for the payment of witness fees, mileage, stenographer's fees, or the expenses of the stenographer to take the testimony or similar expenses upon the part of the board of deputy state supervisors.

Replying to your third question, will say the remedies about which you inquire would be governed by the character of the offense revealed by the investigation and prosecution.

We think the foregoing is an answer to your fourth question.

Respectfully,
C. C. CRABBE,
Attorney-General.

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HUMANE AGENT CANNOT BE APPOINTED SPECIAL CONSTABLE TO PERFORM SAME DUTIES.

SYLLABUS:

A humane agent cannot be appointed a special constable for the purpose of enforcing the so-called humane laws—sections 10,062 to 10,084, inclusive, and section 13,491, General Code.

COLUMBUS, OHIO, December 10, 1923.

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

GENTLEMEN:—Under date of November 17th you submitted for my opinion the following question:

"May a humane agent legally be appointed as special constable and receive fees of constable for services performed as such?"