

1930.

ELECTIONS—BOARD OF DEPUTY STATE SUPERVISORS OF ELECTION NOT AUTHORIZED TO EMPLOY MAN AND AUTOMOBILE FOR USE OF CLERK, MEMBERS, OR FOR TRANSPORTING JUDGES WITH RETURNS AFTER ELECTION.

Any proper and necessary expense in conducting an election may be allowed by authority of section 4821 G. C. that is not otherwise provided for by law. The employment of a man and an automobile for the use of the clerk or members of the board of deputy state supervisors of elections, or for transporting judges with returns, after election, to the office of the board, are not among proper and necessary expenses permitted under said section.

COLUMBUS, OHIO, March 21, 1921.

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter in which you ask the opinion of this department on the following questions concerning expenditures of the board of deputy state supervisors of elections of your county, to-wit:

“1. May the board of deputy state supervisors of elections legally pay for the services of a man and an automobile used by the clerk or members of the board on an election day?

2. May the board legally pay for the services of a man and an automobile for bringing in the presiding judge from his precinct with the returns of election?”

Section 4821 G. C. reads 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.”

This seems to be the only election law covering such general expenses as are otherwise not provided for to be found in the election statutes. It intends to provide for such needful unusual and unexpected expenses incident to any election under the general description of the phrase “proper and necessary,” and since it provides that such expenses shall be paid from the county treasury as other bills are paid, it follows that the board of deputy state supervisors of elections and the county commissioners are permitted and expected to exercise discretion in paying the same. If in their judgment a bill presented is for a proper and necessary item, it would seem that it should be paid; otherwise not.

The state in the operation of its laws in a large measure must depend upon the honesty, ability, and character of the public officials, supported by their bondsmen, whose duty it is to execute them. In matters that involve the exercise of discretion such as is implied in this section, in the absence of bad faith, fraud, or collusion, what is decided by the exercise of prudence and good judgment is usually refused concern and interference by the courts.

Such expenses as are caused by conditions described in sections 5040 and 5042 G. C. at any election might, under certain conditions, warrant the employment of a

man and an automobile, and there may be other things incident to an election, of a like character, that would warrant such expense, but the kind of service mentioned in your first question does not seem to be one that could be said to be proper and necessary, no use being specifically stated.

It may be said that the intent of the election statutes is that all things for the proper conduct of an election be foreseen and provided for prior to the voting, so that the board of deputy state supervisors of elections and the clerk, excluding accidents, will have little else to do on election day except to attend to routine matters coming to the office incident to the casting of the votes.

In the aggregate the amount of money now paid in the conduct of the various elections of the state has become what may be accurately, described as an enormous sum. The strictest economy in the interest of efficiency in the conduct of elections is enjoined upon all.

Section 5043 G. C. provides for the placing of the ballots, etc., in the voting places and for the manner in which returns, after election, to the deputy state supervisors, are to be made, and for the compensation and the mileage of such services. The plain intention of this section is that the mileage paid the presiding judge for such services should take care of his traveling expenses. Consequently, the answer to your second inquiry must be in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1931.

BANKS AND BANKING—CONTRACT MADE WITH BANK FOR DEPOSIT OF TOWNSHIP FUNDS WITHOUT COMPLYING WITH LAW RELATING TO A DEPOSITORY—CONTRACT VOID—WHO LIABLE—ACCOUNTING OF INCREMENT OF SAID FUNDS MAY BE REQUIRED OF BANK.

1. *A contract made with a bank for the deposit of the funds of a township as a depository without the passing of a resolution declaring such intention and containing provisions for all necessary details, as required under provisions of sections 3320 et seq., at a formal meeting of said trustees, at which a full and complete record is not kept, is void ab initio and fails, no depository being thus selected.*

2. *The deposit of the funds of the township in a bank by the township treasurer under such circumstances, even after a bond has been given by the bank, does not release the treasurer and his bondsmen from liability for any loss that thereupon may happen to said funds, nor relieve the township trustees and their bondsmen of liability for neglect in creating a depository as required by law.*

3. *The funds deposited with the bank under such circumstances being trust funds, the increment of which follows the same, an accounting may be required of said bank.*

COLUMBUS, OHIO, March 21, 1921.

HON. CLINTON W. FAWCETT, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Your two letters concerning a township depository read as follows:

“Section 3320-3326 of the General Code of Ohio provide that the trustees of a township may deposit township funds in certain banks and a method of procedure is provided by said sections for the trustees to follow before the funds are awarded.