

In so far as the title to the private lands are concerned, it will be assumed that your Department does not desire to acquire such lands, unless the property from the city may also be acquired. However, as heretofore indicated, the powers exist for your Department to purchase for the State of Ohio lands for fish hatcheries. In the instant case there is no abstract submitted showing that either the municipality or Mr. Moore has a good title to the properties desired to be conveyed. Undoubtedly, if the municipality proceeds according to law and advertises the property, the Director of Agriculture could bid for the State upon such sale the same as any other party interested.

Based upon the foregoing you are advised that:

1. A municipality may, not convey to the State of Ohio for the use of the Department of Agriculture for use as a fish hatchery, lands owned by said municipality, except in pursuance to advertisement and sale to the highest bidder under the provisions of Section 3699, General Code.

2. The Director of Agriculture, under the provisions of Section 1117-2, General Code, may acquire lands by purchase or lease for the purpose of establishing a fish hatchery. In such instances abstracts of title should be obtained, showing good title in the name of the parties making the conveyance, before the acceptance of the conveyance.

I am returning herewith the resolution which you submitted, the deed executed by the officials of the City of Findlay and the deed executed by Mr. Moore.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

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2926.

DEPUTY STATE SUPERVISORS OF ELECTIONS—ASSISTANT CLERKS—  
EMPLOYMENT AND COMPENSATION OF SAME—LIMITATIONS ON  
EMPLOYMENT DISCUSSED.

*SYLLABUS:*

1. *Section 4877, General Code, authorizes the appointment of assistant clerks by boards of deputy state supervisors and inspectors of election and by deputy state supervisors of election when necessary, subject to the limitations contained in said section.*

2. *The compensation of such assistant clerks, in counties containing cities in which registration is required, shall be paid by the county and such cities. In other counties such compensation shall be paid by the counties alone.*

COLUMBUS, OHIO, November 24, 1928.

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

GENTLEMEN:—I am in receipt of your recent letter which reads as follows:

"We are enclosing herewith a copy of a circular letter sent out by the Secretary of State as State Supervisor of Elections to boards of Deputy State Supervisors of elections of Ohio. Your attention is called to the last sentence on the first page, which is as follows :

'Also, where in the best judgment and discretion of your board you deem it necessary, you may appoint additional deputy clerks of your county board of elections and assign them to such precincts where their services will be needed in the casting of the ballots, providing that in such situations you appoint an equal number of such deputy clerks to represent each of the two dominant parties, and if possible that said deputy clerks be qualified electors of the precinct in which they are assigned to service.'

Question: In counties having boards of deputy state supervisors and inspectors of elections and in counties having boards of deputy state supervisors of elections, may the compensation of deputy clerks appointed in accordance with the above instructions be paid out of the county treasury?"

I also have the circular letter which you enclose. I note that while this letter is directed only to "Board of Deputy State Supervisors of Elections of Ohio," your question also includes cases of Deputy State Supervisors and Inspectors of Elections.

The counties of Ohio are divided into two classes with respect to their organization for election purposes, viz., counties containing cities in which registration of electors is required and counties which do not contain such cities. In the first class, the body in control of elections is called the Board of Deputy State Supervisors and Inspectors of Elections, Section 4788, General Code. In the latter class such body is designated merely the Board of Deputy State Supervisors of Elections, Section 4803, General Code. For convenience merely, I will refer to these classes herein, as registration counties and non-registration counties.

Sections 4794 and 4795, General Code, authorize the appointment of one clerk and one deputy clerk in each registration county. Sections 4811 and 4812, General Code, provide for the selection of a clerk in each non-registration county, but do not authorize the appointment of deputy clerks in such counties. I do not find any authority for the appointment of "additional deputy clerks" in either class of counties.

However, Section 4877, General Code, provides that the "Board of Deputy State Supervisors" may when necessary employ one or more "assistant clerks." The entire section reads as follows :

"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, except that in counties containing cities which at the last preceding federal census had or at any subsequent federal census may have a population of three hundred and fifty thousand or more, the board may compensate not to exceed six of the assistant clerks at the rate of two hundred dollars each month, 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 assistant clerks shall be equally divided between the city and county."

In my opinion, the fact that the additional aids to the respective boards were termed "deputy clerks" instead of "assistant clerks," will not preclude their compen-

sation, if the duties performed by them were such as might properly have been performed by assistant clerks and their appointment and compensation as such assistants were authorized.

I came to a similar conclusion in considering the question of the compensation of assistants for elections in the City of Cincinnati, Opinion No. 2056, dated May 4, 1928, from which the following quotation is here pertinent :

"There is of course no magic in the name by which the election board designated the employes necessary to count the ballots cast in the election for councilmen. What the status of these employes was is to be determined by the law under which they were hired and the nature and character of the services performed by them rather than the designation which the election board used in its minutes when authorizing the employment."

The next question which arises is as to whether the above quoted section authorizes the appointment of assistant clerks in both classes of counties. The section is contained in the chapter entitled: "Registration of Electors," but the word "board" used in the section refers to the "board of deputy state supervisors," appearing in Section 4875, General Code. This designation, as we have seen, is applied by Section 4803, General Code, to boards in non-registration counties, and is of no significance in view of the provisions of Section 4802, General Code, which reads as follows :

"In this title and other laws relating to elections, unless otherwise expressly provided therein, the term 'state supervisor' shall apply to the state supervisor and inspector equally with the state supervisor, the term 'deputy state supervisors' shall apply to deputy state supervisors and inspectors of elections equally with deputy state supervisors of elections, the term 'board of deputy state supervisors of elections' shall apply to the board of deputy state supervisors and inspectors of elections equally with the board of deputy state supervisors of elections, and the term 'clerk' shall apply to the clerk of the board of deputy state supervisors and inspectors of elections equally with the clerk of the board of deputy state supervisors of elections."

The concluding sentence of Section 4877, General Code, provides that :

"The compensation of the deputy clerks and assistant clerks shall be equally divided between the city and county."

This answers your question as to the payment of compensation in counties containing registration cities but tends to cast doubt upon the authority of boards in counties not having registration cities to appoint and compensate deputy and assistant clerks.

However, the statute in limiting the compensation of the assistant clerks, provides first, generally, "one or more assistant clerks at a salary of not to exceed the rate of one hundred dollars"; and then specifically "and in all counties *having cities where registration is required*, not exceeding one hundred and fifty dollars, etc." This seems clearly to indicate that authority for the appointment and compensation of assistant clerks is intended to be granted in both classes of counties.

In Opinion No. 2488, Opinions, Attorney General, 1921, Vol. 11, Page 927, it was assumed, without discussion, that Section 4877, General Code, authorized only counties having registration cities to employ assistant clerks and that any authority of other counties in that respect was derived from Section 4821, General Code, which 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."

In Opinion No. 3884, Vol. II, Page 1119, Opinions, Attorney General, 1922, which contains a very careful survey of the history of Section 4877, General Code, the opposite view was entertained as disclosed by the following quotation therefrom on page 1125:

"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 voter's 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 provision of H. B. 195. \* \* \* "

In view of the foregoing analysis of the statutes I have adopted this latter view.

Answering your question specifically, you are advised that assistant clerks may be appointed by boards of election in all counties of the state, where necessary, and compensated subject to the limitations prescribed by Section 4877, General Code, whether denominated as deputy assistant clerks or otherwise. In counties containing registration cities, the compensation of such assistants shall be divided between the city and the county and in other counties shall be paid entirely by the county.

In conclusion, it should be pointed out that an election board is without authority to assign assistant clerks of the board to assist precinct booth officials in the casting and counting of the vote. Notwithstanding this lack of power, however, the duly appointed assistant clerks in the present instance may be compensated for their time and services in accordance with the provisions of the statutes and the terms of their appointment.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*