

October 3, 2017

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
700 Adams Street, Suite 250
Toledo, Ohio 43604-5659

SYLLABUS:

2017-033

1. A county board of elections is a “political subdivision,” as that term is used in R.C. 9.481(B)(1), and is therefore prohibited from requiring its employees, “as a condition of employment, to reside in any specific area of the state.”
2. A county board of elections is prohibited by R.C. 9.481(B)(1) from requiring its employees, as a condition of employment, to reside within the boundaries of the county. R.C. 9.481(B)(1) does not prohibit a county board of elections from appointing officers or employees in accordance with provisions in R.C. Chapter 3501 that impose residency requirements upon those officers or employees.



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OPINION NO. 2017-033

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
700 Adams Street, Suite 250
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Dear Prosecutor Bates:

We have received your request regarding the application of R.C. 9.481 to a county board of elections. R.C. 9.481(B)(1) prohibits a political subdivision from requiring its employees, “as a condition of employment, to reside in any specific area of the state.” You ask whether R.C. 9.481(B)(1) applies to a county board of elections, and, if so, whether a county board of elections may require any of its employees to reside within the boundaries of the county.

A “political subdivision,” as used in R.C. 9.481(B)(1), “means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of the state attaches.” R.C. 2743.01(B); *see also* R.C. 9.481(A)(1) (“[a]s used in this section ... ‘[p]olitical subdivision’ has the same meaning as in [R.C. 2743.01]”). A county board of elections is not a municipal corporation, township, county, or school district. Therefore, a county board of elections is a “political subdivision,” as that term is used in R.C. 9.481(B)(1), only if it constitutes a body “corporate and politic responsible for governmental activities” in a geographic area “smaller than that of the state to which the sovereign immunity of the state attaches.”

Neither R.C. 9.481 nor R.C. 2743.01 defines the phrase “body corporate and politic.” *Cf.* 1988 Op. Att’y Gen. No. 88-098, at 2-479 (the phrase, “body corporate and politic” “is not defined by [R.C. 2744.01(F)]¹ and is not otherwise precisely defined” (footnote added)). Therefore, we shall construe the phrase “body corporate and politic” “according to the rules of grammar and common usage,” and in accordance with any technical or particular meaning the

¹ The definition of “political subdivision” in R.C. 2744.01(F) is similar to the definition of “political subdivision” in R.C. 2743.01(B). R.C. 2744.01(F) states, in pertinent part, that “[p]olitical subdivision” ... means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.”

phrase has acquired. R.C. 1.42. The Ohio Supreme Court has defined “[a] body corporate and politic,” to mean “a governmental body or public corporation having powers and duties of government.”² *Hamilton Cnty. Bd. of Mental Retardation & Dev. Disabilities v. Prof’ls Guild of Ohio*, 46 Ohio St. 3d 147, 150, 545 N.E.2d 1260 (1989); *see also Wiesenthal v. Wickersham*, 64 Ohio App. 124, 131, 28 N.E.2d 512 (Franklin County 1940) (“‘[p]olitic’ is a derivative from a root signifying ‘citizen.’ It would seem therefore, that the phrase connotes simply a group or body of citizens organized for the purpose of exercising governmental functions” (quoting *Uricich v. Kolesar*, 132 Ohio St. 115, 118, 5 N.E.2d 335 (1936))); *Black’s Law Dictionary* 167 (7th ed. 1999) (defining “body politic” as “[a] group of people regarded in a political (rather than private) sense and organized under a single governmental authority”). *Black’s Law Dictionary* 344 (7th ed. 1999) defines “public corporation” to mean “[a] corporation that is created by the state as an agency in the administration of civil government ... [a]lso termed *political corporation*.” *See also Hamilton Cnty. Bd. of Mental Retardation & Dev. Disabilities*, 46 Ohio St. 3d at 150 (relying upon *Black’s Law Dictionary* to define “public corporation”). Therefore, we construe the phrase, “body corporate and politic,” as used in R.C. 2743.01(B), to mean a governmental body that is responsible for carrying out powers and duties of government. *Cf.* 1988 Op. Att’y Gen. No. 88-098, at 2-479 (“for purposes of R.C. 2744.01(F), a body politic and corporate is merely a public entity which has been assigned certain corporate powers”). A county board of elections is thus a “political subdivision,” as that term is used in R.C. 9.481(B)(1), if it is a governmental body that is responsible for carrying out powers and duties of government in a geographic area smaller than that of the state to which the sovereign immunity of the state attaches.

A county board of elections is created by statute in every county in the state and operates only within the county in which it is established. R.C. 3501.06(A); *see also* 1981 Op. Att’y Gen. No. 81-015, at 2-56 (“[w]hile each board of elections derives its authority from the state itself, ... it is empowered to exercise that authority only within the county where situated”). The Secretary of State is the chief election officer and responsible for appointing each of the four members of a county board of elections. R.C. 3501.04; *see also* R.C. 3501.05(A); R.C. 3501.06(A); *State ex rel. Columbus Blank Book Mfg. Co. v. Ayres*, 142 Ohio St. 216, 51 N.E.2d 636 (1943) (syllabus, paragraph two) (“[m]embers of the boards of elections act under the direct control of and are answerable only to the Secretary of State in his capacity as the chief election officer of the state”). Through its members, a county board of elections performs a vast number of duties that relate to the conduct of elections, including, but not limited to, establishing election precincts, R.C. 3501.11(A), providing for the purchase and maintenance of equipment used in voter registration and elections, R.C. 3501.11(C), appointing employees, R.C. 3501.11(D), “[m]ak[ing] and issu[ing] rules and instructions ... as it considers necessary for the guidance of

² In 1988 Op. Att’y Gen. No. 88-098, at 2-479, the Attorney General recognized that “the General Assembly’s designation of a public entity as a body corporate and politic does not confer upon such entity corporate powers in violation of Ohio Const. art. XIII, § 1,” and that “[t]he term ‘body corporate and politic’ does not ... appear to be the equivalent of the word corporation, as that word is commonly understood.”

election officers and voters,” R.C. 3501.11(E), and investigating violations of R.C. Title 35 and “administer[ing] oaths, issu[ing] subpoenas, summon[ing] witnesses, and compel[ling] the production of ... evidence in connection with any such investigation,” R.C. 3501.11(J). A county board of elections has the power to contract and like a typical corporate entity, may be sued. *See, e.g.*, R.C. 3501.141(A) (authorizing a county board of elections to enter into a contract for group insurance policies for its employees when the board of county commissioners has denied coverage); R.C. 3501.301 (requiring a county board of elections to provide notice to “responsible suppliers within the state” to allow for bidding before entering into a contract for printing and furnishing supplies that exceeds \$25,000); *State ex rel. Nichols v. Vinton Cnty. Bd. of Elections*, 20 Ohio St. 3d 1, 2, 484 N.E.2d 690 (1985) (recognizing that a decision by a board of elections with regard to the residence of a candidate for township trustee will be reviewed by a court only to determine whether the board’s decision “is tainted with fraud or corruption or resulted from an abuse of discretion or a clear disregard of the applicable law” (quoting *State ex rel. Morrison v. Franklin Cnty. Bd. of Elections*, 63 Ohio St. 2d 336, 338-39, 410 N.E.2d 764 (1980))); *Vill. of Beachwood v. Bd. of Elections of Cuyahoga Cnty.*, 167 Ohio St. 369, 148 N.E.2d 921 (1958) (considering whether a county board of elections should be enjoined from proceeding with an election during which electors may vote for the detachment of a certain portion of village territory); 1977 Op. Att’y Gen. No. 77-091 (syllabus, paragraph two) (“[a] board of library trustees and a board of elections may enter into a contract whereby library personnel and facilities would be used to conduct voter registration and the library would be reimbursed by the board of elections for the actual costs incurred”).

The election duties performed by a county board of elections constitute powers and duties of government. *See Ayres*, 142 Ohio St. 216 (syllabus, paragraph one) (“[u]nder the mandatory provisions of Section 2, Article X and Section 1, Article XVII of the Constitution of Ohio, and the statutes passed pursuant thereto, all matters pertaining to the conduct of elections are state functions”). A county board of elections performs these duties within a county, a geographic area smaller than that of the state. Thus, a county board of elections is a governmental body responsible for carrying out powers and duties of government in a geographic area smaller than that of the state to which the sovereign immunity of the state attaches, and therefore constitutes a “political subdivision,” as that term is defined in R.C. 2743.01(B) and used in R.C. 9.481(B)(1).³

³ Ohio courts have consistently construed the term, “political subdivision,” as defined in R.C. 2743.01(B), to encompass governmental entities that do not typically constitute political subdivisions in other circumstances. *See, e.g., Howard v. Supreme Court of Ohio*, Franklin App. Nos. 04AP-1093, *et al.*, 2005-Ohio-2130, at ¶10 (finding that a court of common pleas is a political subdivision, as defined in R.C. 2743.01(B), even though it “is not a political subdivision in the ordinary sense”); *Sams v. State*, No. 98AP-645, 1999 Ohio App. LEXIS 807, at *6 (Franklin County Mar. 4, 1999) (the definition of political subdivision under R.C. 2743.01(B) encompasses the common pleas court). *Cf. Jones v. Franklin Cnty. Sheriff’s Dep’t*, No. CA99-01-004, 1999 Ohio App. LEXIS 2856, at *10 (Butler County June 21, 1999) (“[i]t is clear from a reading of R.C. 2744.01(F) that both the Sheriff’s Office and the Prosecutor’s Office are political sub-divisions as that term is defined”); *Dalton v. Bureau of Criminal Identification &*

See generally *Votava v. City of Bowling Green*, No. WD-76-33. 1977 Ohio App. LEXIS 10301, at *3 (Wood County June 17, 1977) (referring to a board of elections as a body politic).

Accordingly, we conclude that a county board of elections is a “political subdivision,” as that term is used in R.C. 9.481(B)(1), and is therefore prohibited from requiring its employees, “as a condition of employment, to reside in any specific area of the state.”

Your second question asks whether a county board of elections may require any of its employees to reside within the boundaries of the county. We have concluded that a county board of elections is a “political subdivision,” as that term is used in R.C. 9.481(B)(1), and is therefore prohibited from requiring its employees, “as a condition of employment, to reside in any specific area of the state.” A county is a specific area of the state. Therefore, a county board of elections is prohibited by R.C. 9.481(B)(1) from requiring its employees, as a condition of employment, to reside within the boundaries of the county.

A county board of elections is required or authorized to appoint and remove various officers and employees, including its director, deputy director, all registrars, precinct officials, and interpreters, R.C. 3501.09; R.C. 3501.11(D); R.C. 3501.22; R.C. 3501.221(A). Through its enactment of various provisions in R.C. Chapter 3501, the General Assembly has imposed residency requirements upon certain of these officers or employees. R.C. 3501.09, for example, requires that a county board of elections “select ... resident elector[s] of the county” for the positions of director and deputy director of the board. The residency requirements imposed upon officers or employees of a county board of elections by the General Assembly do not implicate the provisions of R.C. 9.481(B)(1). The General Assembly is not a “political subdivision,” for the purpose of R.C. 9.481(B)(1), nor is a county board of elections imposing its own residency requirements in violation of R.C. 9.481(B)(1) by complying with these statutes.

Accordingly, we conclude that a county board of elections is prohibited by R.C. 9.481(B)(1) from requiring its employees, as a condition of employment, to reside within the boundaries of the county. R.C. 9.481(B)(1) does not prohibit a county board of elections from appointing officers or employees in accordance with provisions in R.C. Chapter 3501 that impose residency requirements upon those officers or employees.

Investigation, 39 Ohio App. 3d 123, 125, 530 N.E.2d 35 (Franklin County 1987) (“while the ‘court of common pleas of each county is an instrumentality of the state and is not a political subdivision within the ordinary meaning thereof,’ ... the definition of political subdivision under R.C. 2743.01(B) encompasses the common pleas court and eliminates it from the definition of state under R.C. 2743.01(A)” (quoting *Tymcio v. State*, 52 Ohio App. 2d 298, 300, 369 N.E.2d 1063 (Franklin County 1977))); 1988 Op. Att’y Gen. No. 88-098, at 2-482 (“although a county bridge commission is not” specifically “designated by statute” a body corporate and politic, “the fact that it is clearly a public entity vested with various corporate powers qualifies it as a body corporate and politic for purposes of R.C. 2744.01(F)”).

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A county board of elections is a “political subdivision,” as that term is used in R.C. 9.481(B)(1), and is therefore prohibited from requiring its employees, “as a condition of employment, to reside in any specific area of the state.”

2. A county board of elections is prohibited by R.C. 9.481(B)(1) from requiring its employees, as a condition of employment, to reside within the boundaries of the county. R.C. 9.481(B)(1) does not prohibit a county board of elections from appointing officers or employees in accordance with provisions in R.C. Chapter 3501 that impose residency requirements upon those officers or employees.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General