

659

ELECTIONS, BOARD OF—PROVIDED FOR REGISTRATION OF ENTIRE COUNTY—ADDITIONAL COMPENSATION PROVIDED FOR SUCH MEMBERS BY SECTION 4785-18 G. C. SHOULD BE COMPUTED FOR ANNUAL PERIOD COMMENCING FIRST DAY OF MARCH NEXT FOLLOWING FIRST ACTUAL REGISTRATION OF VOTERS IN COUNTY.

## SYLLABUS:

Where a board of elections provides for the registration of an entire county, the additional compensation provided for such members by Section 4785-18 of the General Code should be computed for the annual period commencing on the first day of March next following the first actual registration of the voters in such county.

Columbus, Ohio, June 27, 1949

Hon. Floyd A. Collier, Prosecuting Attorney, Wood County  
Bowling Green, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 4785-18 of the General Code after fixing and providing for the salary for the members of the Board of Elections of each county, provides for additional compensation where there

are registration precincts. That part of the section referred to reads as follows: 'except that in counties containing registration precincts additional compensation of two dollars for each full one thousand population in the total area consisting of such registration precincts in the county shall be allowed;'

"In Wood County they have had no registration precincts. On November 20, 1948, the Board of Elections passed the necessary legislation providing for registration precincts for all of Wood County.

"Under Section 4785-36, registration for the voters for the entire county will be held September 22, 1949, and finishing September 28, 1949, providing, however, that annual registration may be had at the office of the Board of Elections in Bowling Green thereafter under Section 4785-39.

"The Board of Elections and their date of appointment is as follows: T. O. C. appointed March 1, 1948, K. M. appointed March 1, 1948, J. K. appointed March 1, 1946, R. B. appointed March 1, 1946.

"The question has arisen, 'When does the increase in salary start for each member of said Board of Elections?' that is, does their increase in salary start on the day the resolution was passed, to-wit, November 20, 1948, does it start on March 1, 1949, the beginning of their annual term succeeding said resolution, does it start following the registration in September, 1949, does it start March 1, 1950, the beginning of their annual term succeeding said actual registration, or does it start on some other date which you might think of?"

The compensation of members of county boards of elections is provided by Section 4785-18 of the General Code as follows:

*"The annual compensation of members and clerks of the boards of elections shall be determined on the basis of the population of the county according to the next preceding federal census, and shall be paid monthly out of the appropriations made to the board of elections and upon vouchers or payrolls certified by the chairman, or a member of the board designated by it, and countersigned by the clerk or in his absence by the deputy clerk. Upon presentation of any such voucher or payroll the county auditor shall issue his warrant upon the county treasurer for the amount thereof as in the case of vouchers or payrolls for county offices and the treasurer shall pay the same.*

*"The amount of annual compensation of members of the board shall be as follows: eighteen dollars for each full one thousand of the first one hundred thousand population; eight*

dollars for each full one thousand of the second one hundred thousand population; six dollars for each full one thousand of the third one hundred thousand population; four dollars for each full one thousand of the fourth one hundred thousand population; and three dollars for each full one thousand above four hundred thousand population; *except that in counties containing registration precincts* additional compensation of two dollars for each full one thousand population in the total area consisting of such registration precincts in the county shall be allowed; provided, however, that the compensation of a member of the board shall not be less than two hundred fifty dollars and shall not exceed four thousand five hundred dollars annually. If the population of the total area consisting of such registration precincts in a county is not completely ascertainable from the official reports of the next preceding federal census as certified by the director of the federal census the board shall determine the population of such area by using such census reports to ascertain the population of such portions thereof, the populations of which are reported therein, and by determining the population of the remainder thereof in such manner as it may deem proper.”  
(Emphasis added.)

The first question to be determined in answering your inquiry is whether or not a member of a county board of elections is an officer within the legal definition of that term as used in Section 20 of Article II of the Constitution of Ohio. This section of the Constitution reads as follows:

“The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

If the prohibition contained in the constitutional provision applied to such member the statute providing for the increased compensation would not apply until the beginning of the next succeeding term of such member following the establishment of registration precincts. This question was recently before the Common Pleas Court of Trumbull County in the case of Gertrude O. Wilkins and Michael Del Bene v. Trimbur, Auditor, 39 O.O. 178, decided March 9, 1949, in which it was held, as disclosed by the syllabus, as follows:

“Members of a county board of elections are not public officers, but merely employees of the state whose compensation is not controlled by Section 20, Article 2 of the Constitution

denying the right to any change in compensation during their term of office.

“Members of the board of elections are merely deputies, performing certain functions coterminous with the county in which they are appointed on behalf of, and representatives of the Secretary of State, the chief election officer.”

Having concluded from the foregoing that the compensation of such members may be increased during his term of office, we must examine the statute awarding the compensation to determine the conditions which would authorize such statutory increase and the time it would become effective. It is to be noted that the only type of compensation mentioned in Section 4785-18, *supra*, is annual compensation. Although said section provides for monthly payment of such compensation and directs the method and manner of computation and payment, each paragraph makes reference only to annual compensation. In construing the term “annual compensation” as used in this section with reference to the payment of the annual salaries of county board of elections members and the clerks of such boards based on the federal census, one of my predecessors, in an opinion rendered by this office in 1941 and reported in Opinions of the Attorney General for the year 1941, being Opinion No. 4042, ruled, as disclosed by the last five branches of the syllabus as follows:

“4. The word ‘annual’ as applied to the stated salary or compensation fixed by Section 4785-18, General Code, for members of county boards of elections, and by Section 4785-19, General Code, for clerks of county boards of elections, means not the calendar years but the years of the particular officer’s term of office according to the time of the year when the term commences.

“5. The years of the term of a member of a county board of elections for which annual compensation is provided by Section 4785-18, General Code, extends from March 1st of each calendar year to and including the last day of February of the following calendar year.

“6. An ‘annual’ salary based on population as shown by a federal census must be computed on the year as a whole which year may not be split up into periods by fluctuations of population as so ascertained which may occur during the year.

“7. The annual salary of all members of a county board of elections for the years of their respective terms extending from March 1, 1940 to February 28, 1941, should be computed on the basis of the 1930 census.

"8. The annual salaries for members of a county board of elections and the clerks of such boards, now in office should be computed for the annual period beginning in March, 1941, and for each succeeding annual period during their respective terms of office, on the basis of the 1940 census, regardless of when they may have been appointed or when their terms of office may have begun."

The basis for the holding in that opinion that the compensation of the members of the board of elections for the annual period beginning in March, 1940 should be computed on the 1930 census was the fact that the 1940 census was not effective until April 1, 1940. It is accordingly my opinion that the amount of compensation to which any member is entitled must be determined or determinable on the date of the commencement of his term of office or on any succeeding anniversary date thereof.

As a result of the foregoing it is obvious that the remaining problem to be considered is whether the members of the board of elections of Wood County would be entitled, under the facts which you present, to the increased compensation provided for in the statute on March 1, 1949, or on March 1, 1950. By reference to the last emphasized wording of the above quoted statute it will be noted that the words "containing registration precincts" are used. It is significant that the legislature used the transitive verb "containing." The word "contains" has been defined by lexicographers as meaning "to hold within fixed limits; to enclose; to hold", and "to occupy or include." To "contain" is normally understood to have something within, or as an element, fraction or part of a designated object or thing. It denotes an existing fact as distinguished from a potential one. I am therefore of the opinion that the statute contemplates that such precincts shall actually exist before the board members shall be entitled to the additional compensation provided therein.

In answer to your question you are therefore advised that it is my opinion that where registration precincts are newly created by a county board of elections, the additional compensation provided for members of such boards by Section 4785-18 of the General Code should be computed for the annual period commencing on the first day of March next following the first actual registration of the voters of the respective precincts.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.