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ELECTIONS, MEMBER, BOARD OF—NOT PUBLIC OFFICER—  
MAY HAVE SALARY INCREASED DURING TERM—ARTICLE  
II, SECTION 20, CONSTITUTION OF OHIO.

**SYLLABUS:**

Members of the board of elections are not public officers within the meaning of Article II, Section 20 of the Ohio Constitution. A member of the board of elections may have his salary increased during his term.

Columbus, Ohio, August 29, 1949

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is requested whether the increase of salary of a member of the Board of Elections under Section 4785-18 would apply from the effective date of said section to the end of said member's term, which would expire February 28, 1950.

"For your information, Montgomery County was registered by precincts prior to and at the time of the effective date of the enactment of said section."

For the sake of clarity, I shall rephrase your question to read as follows:

Can a member of the Board of Elections have his salary increased during his term?

Article II, Section 20 of the Ohio 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."

The question in this case is whether or not a member of a county Board of Elections is a public officer within the meaning of Article II, Section 20 of the Ohio Constitution. If he is a public officer, his salary cannot be increased during his term. If he is a mere employee of the state, there is no prohibition against increasing his salary during the term.

This question was answered directly in *Gertrude O. Wilkins and Michael Del Bene v. Trimbur, Auditor of Trumbull County*, 39 O. O. 178, which was decided on March 9, 1949. After an enumeration of the duties of the Board of Elections and of the power over them that the Secretary of State has, the Court states in part on page 179 as follows:

"\* \* \* it is evident from these controlling powers that the Secretary of State has been clothed with by the Legislature that he should remain the sovereign function of the state, and responsi-

bility for the elections rests squarely upon his shoulders, and the members of the Board of Elections are merely representatives of the Secretary of State. \* \* \* This lack of capacity for independent action is such that it deprives them of one of the necessary and essential characteristics of an officer within the meaning of the Constitution."

The first and second branches of the syllabus read as follows:

"1. 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.

"2. 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."

In Opinion No. 659, Opinions of the Attorney General for 1949, I advised that a member of a Board of Elections was not a public officer within the meaning of Article II, Section 20 of the Ohio Constitution and cited the above Common Pleas Court case in support thereof. Since the rendition of that opinion, however, Judge Ross Michener of the Belmont County Common Pleas Court, in a decision dated August 11, 1949, in the case of State ex rel. Thomas Powers, et al. vs. W. T. McCort, Auditor, being cause number 12930 on the docket of said Court dismisses the idea that county boards of elections are deputies of the Secretary of State and holds them to be officers, on the ground that such local boards cannot perform any and all acts of their principal, but on the contrary have a portion of the sovereignty of the state given to them and perform their own set of duties.

In State, ex rel. The Columbus Blank Book Mfg. Co. v. Ayres, Auditor, 142 O. S. 216, 27 O. O. 176, 51 N. E. 2nd 636, the question of whether or not members of the boards of elections were county officers was decided by the Supreme Court as disclosed by the first and second branches of the syllabus in said case as follows:

"1. Under 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.

"2. Members 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. They perform no county functions and are not county officers.”

In arriving at its decision in the Columbus Blank Book Case the Court at page 222 made the following statement:

“From a reading of the sections quoted as well as other sections of the election code we think the conclusion is inescapable that members of boards of elections act under the direct control of and are answerable only to the Secretary of State and are in law and fact deputies of the Secretary of State in his capacity as the chief election officer of the state. They perform no county functions and are not county officers. \* \* \*”

In view of the above quoted language of the Supreme Court, I am not inclined to alter the conclusions which I reached in Opinion No. 659, supra, until that Court modifies or reverses its holding in that case.

Therefore, it is my opinion that a member of the board of elections is not a public officer within the meaning of Article II, Section 20 of the Ohio Constitution. Thus, the salary of a member of the board of elections may be increased during his term.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.