

1580.

DEPUTY STATE SUPERVISORS OF ELECTIONS NOT "SPECIAL APPROPRIATING AUTHORITY"—COUNTY HOME IS ACTIVITY OF "SUBDIVISION" UNDER SECTION 5625-1, GENERAL CODE—"FISCAL OFFICER" OF COUNTY BOARD OF EDUCATION, TRUSTEES OF DISTRICT TUBERCULOSIS HOSPITAL, TRUSTEES OF DISTRICT CHILDREN'S HOME, BOARDS OF HEALTH AND COUNTY CHILDREN'S HOME DESIGNATED.

SYLLABUS:

1. *A board of deputy state supervisors of elections is not a "special appropriating authority" as that term is defined in Section 5625-1, General Code.*

2. *A "county home" is one of the activities of a "subdivision" to-wit, a county, as the term "subdivision" is defined in Section 5625-1, General Code.*

3. *The "fiscal officer" of a county board of education is its clerk; of the trustees of a district tuberculosis hospital, or of a board of trustees of a district children's home, is the accounting officer for such board, whether he be called clerk, secretary or otherwise; the auditor of a county, which constitutes all or a major portion of a general health district, is the fiscal officer for the board of health of the general health district; the auditor of a city, which constitutes a city health district, is the fiscal officer of the board of health for the city health district.*

4. *The superintendent of a county children's home is the fiscal officer for the board of trustees of such home.*

COLUMBUS, OHIO, January 16, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion in answer to the following questions:

"Question 1. Under the definition set out in Section 5625-1, G. C., 112 O. L. 392, is a board of deputy state supervisors of elections a special appropriating authority?"

Question 2. If so, who is the fiscal officer of such board, as referred to in Section 5625-34, G. C., 112 O. L. 4077?"

Question 3. Is a board of county commissioners a special appropriating authority for the conduct of the county home? See Section 2522 of the General Code.

Question 4. Who is the fiscal officer of the following district authorities as designated in Section 5625-1 of House Bill 80; the county board of education, the trustees of the district tuberculosis hospital, the trustees of a district children's home, the district board of health?"

Question 5. Who is the fiscal officer of the trustees of a county children's home?"

Sections 5625-1, 5625-33, 5625-34, General Code, as amended (112 O. L. 391) and 5626-1, General Code (112 O. L. 424), read in part as follows:

Sec. 5625-1. "The following definitions shall be applied to the terms used in this act:

(a) 'Subdivision' shall mean any county, school district, except the county school district, municipal corporation or township in the state.

(b) * * *

(c) * * *

(d) 'Fiscal officer' in the case of a county shall mean the county auditor ; in the case of a municipality, shall mean the city auditor or village clerk, or such officer as, by virtue of the charter, has the duties and functions of the city auditor or village clerk ; in the case of a school district, the clerk of the board of education ; and in the case of a township, the auditor of the county in which such township is located.

(e) * * *

(f) * * *

(g) * * *

(h) * * *

(i) * * *

(j) 'Special Appropriating authority' shall mean each board of directors, trustees, commissioners or other officers having by law or charter the control of the detail appropriation and of the expenditures of the funds of any children's home, library, hospital, municipal university or other institution or activity, except a district authority.

(k) 'District authority' shall mean each board of directors, trustees, commissioners or other officers controlling a district institution or activity which derives its income or funds from two or more subdivisions, such as the county school board, trustees of district tuberculosis hospitals and district children's homes, district board of health and other boards."

Sec. 5625-33. "No subdivision or taxing unit shall:

(a) Make any appropriation of money except as provided in this act ;
* * *

(b) * * *

(c) * * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same * * * has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. * * *

Upon certification by the auditor or other chief fiscal officer that a certain sum of money, not in excess of five hundred (\$500) dollars has been lawfully appropriated * * *

Any certificate of the fiscal officer attached to a contract, shall be binding upon the political subdivision as to the facts set forth therein. Upon the request of any person, firm or corporation receiving an order or entering into a contract with any political subdivision the certificate of the fiscal officer shall be attached to such order or contract. * * *

Sec. 5625-34. "No special appropriating authority or district authority shall in transacting its own affairs, do any of the things prohibited to a subdivision by Section 33 of this act ; but the appropriation therein referred to

shall become the appropriation by the special appropriating authority or district authority, and the fiscal officer therein referred to shall mean the fiscal officer of the special appropriating authority or district authority."

Sec. 5626-1. "'Fiscal officer' in the case of a township shall mean the township clerk, anything in Am. Sub. H. B. No. 80 passed by the 87th General Assembly to the contrary notwithstanding."

Section 4788, General Code, provides:

"In each county of the state which contains a city wherein annual general registration of the electors is required by law, or which contains two or more cities in which registration is required by law, there shall be a board of deputy state supervisors and inspectors of elections, consisting of four members who shall be qualified electors of the county."

The term "special appropriating authority" is new to our law. It appears first and only in House Bill No. 80 as enacted by the 87th General Assembly. The language of this act purporting to define what is meant by "special appropriating authority" is that contained in Section 5625-1, clause (j), supra. This language as a definition leaves much to be desired. It is stated that the term "special appropriating authority" means the officers or officer, whether a board of trustees, directors, commissioners or otherwise, who have by law or charter the control of the detail appropriation and of the expenditure of the funds of all institutions and activities except those institutions or activities controlled by a "district authority." In so far as the definition enumerates certain institutions or activities, to-wit, children's homes, libraries, hospitals and municipal universities, no difficulty is encountered. But the section goes further and includes each "other institution or activity, except a district authority" thus making it all inclusive of those officers and boards, who by law or charter have the control of the detail appropriation and expenditure of the funds which are allotted for the carrying out of the purposes of the institution or activity, except a district authority.

It seems clear, however, that unless the board or officer has complete charge of the detailed expenditure of the funds allotted to the institution or activity such board or officer does not come within this classification, but is merely a subordinate agency, under the control of the subdivision or taxing authority. That is to say, if the expenditures are controlled or the detail appropriation of the monies, allotted to the institution or activity, is controlled by some superior authority other than the board or officer; such board or officer is not a "special appropriating authority." This interpretation is forfeited by the language of Sections 5625-11 and 5625-31, General Code (112 O. L. 396, 405), which read in part as follows:

Section 5625-11. "The taxing authority of a subdivision shall establish a special fund for the current expenses of each special appropriating authority other than those authorities whose special funds, provided by special levies, are established under the provisions of Section 9 of this act. Into such funds shall be transferred from the general fund of the subdivision such moneys as are appropriated by the taxing authority thereof for the purposes of such special appropriating authorities * * *."

Sec. 5625-31. "Each special fund under the control of a special appropriating authority shall be established by a transfer in a lump sum, from the general fund, unless otherwise prescribed by this act, which transfer shall

be duly authorized by the taxing authority of the subdivision; but expenditures from such special fund shall only be made upon the authority of an appropriation by the special appropriating authority. The requirement of a certificate from the county auditor shall apply to any appropriation for the benefit of any special fund authorized by the taxing authority of the subdivision, but not to any appropriation by the special appropriating authority."

Deputy state supervisors of elections are state officers and do not themselves in the final analysis have anything to say about the amount of money to be expended or the manner of its expenditure in the conduct of elections. These expenditures are either fixed by law or controlled by 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."

The above section has been considered in a number of opinions of this department.

In an opinion reported in the Annual Report of the Attorney General for 1913, at page 1401, it is said:

"The use of the phrase 'as other county expenses' as applied to election expenses means that election expenses not otherwise provided for shall be paid from the county treasury upon the order or approval of the county commissioners in the same manner they allow and pay other claims against the county."

There are a great many provisions of law with reference to the manner of the payment of election expenses: These are considered in two opinions of the Attorney General reported in the Annual Report of the Attorney General for 1912, at pages 200 and 301. In all cases, however, the expenditures are either fixed by statute or are subject to the approval of the county commissioners.

In the opinion of the Attorney General, reported in Opinions, Attorney General, 1922, page 957, there was considered the right to pay for an adding machine which had been purchased by a board of deputy state supervisors of elections for use of the board. It was there said:

"Whether or not such a purchase is a proper expense is a question of fact to be determined in the first instance by the county commissioners. Said commissioners are the sole judges of what is a proper expense unless such judgment should constitute a clear abuse of discretion."

In the case of *State vs. Batterman*, 3 C. C. 626, it was held:

"If the amount of the claim is not fixed by law such as a claim for ballot boxes, such claim cannot be paid on a warrant issued by the auditor without the sanction of the commissioners."

Again, in an opinion of the Attorney General (Opinions, Attorney General, 1921, page 927) it is stated:

"In creating and paying for any proper and necessary expense in the conduct of elections, under Section 4821, General Code, the joint concurrence of the good judgment and discretion of the board of deputy state supervisors of elections and of the county commissioners is necessary."

It should be noted that House Bill No. 80 of the 87th General Assembly, wherein is defined the term "special appropriating authority" and provisions are made with respect to the budget procedure of such agencies, is entitled "An Act—Providing for levying of taxes by local subdivisions and their method of budget procedure."

A board of deputy state supervisors of elections cannot in any sense of the word be considered an institution or activity of a local subdivision of the state, but is a part of the state itself. As stated in *Vail vs. Craig*, 8 N. P. 148:

"The legislature in designating these officers as deputy officers intended to make them officers subordinate to the secretary of state the principal officer in the system of laws providing for the conduct of elections, * * * and though their jurisdiction may be coterminous with the county they are not county officers."

It seems clear, therefore, that a board of deputy state supervisors of elections is not a "special appropriating authority" as the term is used in House Bill No. 80 of the 87th General Assembly, and that the provisions of said act are in no way applicable to such boards.

The county infirmary or county home, as it is now designated by law, is under the direct control of the county commissioners, who have control of the detail appropriations therefor. Section 2522, General Code, provides in part, as follows:

"The board of county commissioners shall make all contracts for new buildings and for additions to and repairs of existing buildings necessary for the county infirmary and shall prescribe such rules and regulations as it deems proper for its management and good government, and to promote sobriety, morality and industry among inmates. * * * The commissioners shall keep a separate book in which the clerk, or if there be no commissioners' clerk, the county auditor, shall keep a separate record of their transactions respecting the county infirmary, which book shall be known as the infirmary journal. * * *"

In Opinion No. 1296, addressed to your Bureau on November 25, 1927, it was said:

"The county home, the county tuberculosis hospital when the county commissioners constitute the board of trustees of said hospital, and other similar institutions, are departments under the direct control of the county commissioners within the provisions of Section 2412-1, General Code."

The statutes at no place define the term "fiscal officer." Section 5625-1, supra, in clause (d) states who the fiscal officer is in counties, municipalities, school districts and townships, but neither this section nor any other section of the Code makes any provision, except by implication, as to what the term means in its application to "special appointing authorities" or "district authorities." It is clear, however,

from the provisions of Sections 5625-33 and 5625-34, supra, that such authorities are to be considered as having a fiscal officer.

The word "fiscal" is defined by Bouvier as "belonging to the public treasury." Webster defines it as a noun to mean "treasurer," as an adjective, "financial, pertaining to finances." In the case of *Dorian vs. Walters* (Ky.), 116 S. W. 303, it is said:

"A city officer who collects or receives public money although not holding it is a fiscal officer within constitution Section 160 making fiscal officers of cities of second class ineligible to succeed themselves and providing that the term 'fiscal officer' shall not include one whose chief duty is not collecting or holding public money."

It is apparent that as the term is used in Section 5625-1, et seq., of the General Code it does not mean the treasurer or officer having the physical possession of the monies of the subdivision or taxing unit, but rather the officer who has charge of the accounts and the drawing of vouchers for the disbursement of the appropriations which have been allotted to the subdivision or taxing unit. The auditor of a county, or a city, and the clerk of a village are in each case a separate officer from the treasurer.

I am of the opinion, therefore, that the fiscal officer in the cases of "special appointing authority," or "district authority," is the person who performs the duties for such authority corresponding to the duties performed for counties, municipalities and townships by their auditors and for school districts by their clerks, that is, the person who keeps the accounts and draws vouchers against the appropriation in the disbursement of funds. This would be the clerk or secretary of boards of trustees for children's homes, libraries, hospitals and other boards.

Specifically answering your questions in their order, it is my opinion that:

1. A board of deputy supervisors of elections is not a "special appropriating authority" as defined in Section 5625-1, General Code.
2. A county home is under the direct supervision of the county commissioners for the county and such home is one of the activities of a "subdivision" as the term is defined in Section 5625-1, viz., a county.
3. The fiscal officer for a county board of education is its clerk; for the board of trustees of a district tuberculosis hospital is the employe of the board, who keeps the record of the financial transactions of the board and audits and pays its bills. He may be designated secretary, clerk or auditor, as the board sees fit. In this connection the observations of the Attorney General with reference to the board of trustees of district tuberculosis hospitals, in an opinion rendered in 1920, Opinions, Attorney General, 1920, Vol. I, page 163, as follows, are pertinent:

"There is no specific mention of or a provision for a secretary for the board of trustees. * * *

The sections creating the board and defining its duties, however, vest the board with the general management and control of such hospital. These sections carry with them the implied power to do such things as are necessary to carry into effect the expressly granted powers. In this connection it must be apparent that the orderly transaction of its business may require the services of a secretary. For illustration, a record of the meetings of the board should be kept; its financial transactions should be recorded and evidenced in such a manner that the board may be intelligently advised of the

financial condition of the hospital and be able to account for the funds intrusted to it; and the employment of such clerical assistants may be regarded as 'necessary for the proper conduct of the hospital,' as provided in Section 1353 G. C. * * *

The fiscal officer for a board of trustees of a district children's home is its accounting officer, whether he be called clerk, secretary or otherwise. The fiscal officer for the several district boards of health are the several auditors, who are designated to act as auditors for each class of such districts by the provisions of Section 1261-38, General Code, which reads in part as follows:

"The auditor of a county which constitutes all or a major portion of a general health district shall act as the auditor of the general health district. The auditor of a city which constitutes a city health district shall act as the auditor of a city health district. * * *"

4. With reference to the county children's home, it is provided by Sections 3081 and 3084, General Code, as follows:

Sec. 3081. "When the necessary site and buildings are provided by the county, the commissioners shall appoint a board of four trustees, as follows: One for one year, one for two years, one for three years, and one for four years, from the first Monday of March thereafter. Not more than two of such trustees shall be of the same political party. Annually thereafter on the first Monday of March, the county commissioners shall appoint one such trustee, who shall hold his office for the term of four years and until his successor is appointed and qualified."

Sec. 3084. "The board of trustees shall designate a suitable person to act as superintendent of the home, who shall also be clerk of such board, and who shall receive for his services such compensation as the board of trustees designates at the time of his appointment. He shall perform such duties, and give security for their faithful performance, as the trustees require."

I am, therefore, of the opinion that the superintendent of the county children's home is the fiscal officer for the board of trustees of such home.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1581.

APPROVAL, ARTICLES OF INCORPORATION OF THE MCKINLEY LIFE
INSURANCE COMPANY OF CLEVELAND, OHIO.

COLUMBUS, OHIO, January 16, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the articles of incorporation of The McKinley Life Insurance Company of Cleveland, Ohio, with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.