

The Griswold act of which this section was made a part went into effect on June 1, 1922, and was in effect at the time these bonds were issued.

The semi-annual maturities as provided in the bond resolution were not in accordance with the provisions of this statute. The law amending section 2295-12 G. C., providing for semi-annual maturities was passed in 110 O. L., page 459. This latter act went into effect July 3, 1923. It does not make any provision for bonds issued prior thereto.

The transcript also contains the affidavit of one publisher to the effect that the notice of bond sale was published for three times, beginning on April 30, 1922, and the last publication was on May 14, 1922, giving notice of the sale on May 20th.

Section 2294, General Code, provides in part as follows:

"All bonds issued by boards of county commissioners, boards of education, township trustees, or commissioners of free turnpikes, shall be sold to the highest bidder after being advertised once a week for three consecutive weeks and on the same day of the week, in a newspaper having general circulation in the county where the bonds are issued, and, if the amount of bonds to be sold exceeds twenty thousand dollars, like publications shall be made in an additional newspaper having general circulation in the state."

In the case of *State of Ohio vs. Kuhner and King*, 107 O. S., page 406, the court held as follows:

"The requirement of section 1206, General Code, that 'the state highway commissioner shall advertise for bids for two consecutive weeks' is mandatory, and the contract entered on June 14 for advertisement in two weekly newspapers of the county on June 6th and June 13th is invalid."

A similar section was construed to require publication for the full period of time specified therein, that is, to the effect that these bonds should have been advertised the full period of twenty-one days.

For the foregoing reasons, I am compelled to disapprove the issue of bonds as purchased by you, and I advise that you do not accept said bonds.

Respectfully,

C. C. CRABBE,

Attorney General.

2844.

EXPENDITURE OF MONEY BY BOARD OF DEPUTY STATE SUPERVISORS AND INSPECTORS OF ELECTIONS—SECTIONS 5660 AND 5661, GENERAL CODE, NOT APPLICABLE.

SYLLABUS:

Sections 5660 and 5661 of the General Code are not applicable to contracts, agreements or obligations or of the order for the payment or expenditure of money by the Board of Deputy State Supervisors and Inspectors of Elections.

COLUMBUS, OHIO, October 6, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

"1. Do the provisions of section 7 of Senate Bill No. 94, 111 O. L. 375, require that the county auditor certify that the money required to meet the expense of the purchase of election supplies has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, before the board of deputy state supervisors of elections can legally enter into a contract for the purchase of such supplies?

"2. May the purchase price for such supplies be paid out of the county treasury upon the certificate of the board of deputy state supervisors of elections without the allowance of the county commissioners?

"3. May the cost of such supplies be paid out of the county treasury without the certificate of the county auditor required by section 6 of Senate Bill No. 94?"

I am also in receipt of communication from your department in which the following question is asked:

"Are the provisions of section 5660 G. C. as amended, applicable to obligations incurred by the Board of Deputy State Supervisors and Inspectors of Elections, and which are payable from the registration city treasury?"

Section 5660 of the General Code as enacted by the last legislature in 111 O. L. page 371, insofar as it is applicable to your question, provides as follows:

"No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee, of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification which certificate shall be filed with such authority, officer, employee, commissioners, council, body or board, or the chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement or obligation or so long as the order is in force. Taxes and other revenues in process of collection or the proceeds to be derived from lawfully authorized bonds, notes, or certificates of indebtedness sold and in process of delivery shall, for the purposes of this section, be deemed in the treasury or in process of collection and in the appropriate fund."

Section 5661 of the General Code, as enacted by the last legislature in 111 O. L. page 371, in part provides:

"Every contract, agreement or other obligation and every order entered into or issued contrary to the provisions of the preceding section shall be null and void, and no claim or demand thereon shall be recoverable from any county or other political subdivision or taxing district or from any public funds.

"Any officer, employee or other person who issues any order contrary to the provisions of the preceding section or who expends or authorizes the expenditure of any public funds for or on account of any such void contract, agreement, obligation, or order, shall be liable to the county or other political subdivision or taxing district for the full amount paid from the funds of such county, subdivision or district on or on account of any such void contract, agreement, obligation, or order."

It will be noted that Section 5660 provides that no contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds shall be made or assumed by any authority, officer or employe of any *county or political subdivision or taxing district*, nor shall any order for the payment or expenditure of money be approved by the *county commissioners, council, or by any body, board, officer or employe of any such subdivision or taxing district*, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or obligation has been lawfully appropriated or authorized for such purpose and is in the treasury or in the process of collection free from outstanding obligations.

This section only applies to an authority, officer or employe of a county or political subdivision or taxing district. Therefore, the question raised is whether the Board of Deputy State Supervisors and Inspectors of Elections are such officers as are mentioned in this section. If they are such officers then they are subject to section 5660 of the General Code as enacted, and this act would control the entering into contracts or obligations and the expenditure of any funds by them.

Sections 4788 and 4789 of the General Code, read as follows:

"Section 4788. 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."

"Section 4789. On or before the first day of May, biennially, the state supervisor and inspector of elections shall appoint for each such county two members of the board of deputy state supervisors and inspectors of elections, who shall each serve for a term of four years from such first day of May. One member so appointed shall be from the political party which casts the highest number of votes at the last preceding November election for governor, and the other member shall be appointed from the political party which casts the next highest number of votes for such officer at such election."

It would seem by these sections that a member of the Board of Deputy State Supervisors and Inspectors of Elections is not a county authority, officer or employe. In the case of *State ex rel. vs. Craig*, found in 8 O. N. P. page 148, the court say:

"The deputy state supervisors of elections are not officers within the legal definition of that term, and, though their jurisdiction may be co-terminus with that of the county they are not county officers."

In the opinion of Ford, Judge, page 150, may be found the following:

"From an examination of the election laws in this state, it seems apparent the legislature intended that the conduct of elections should belong to the state and be under the control of state officers."

If the members of the Board of Deputy State Supervisors and Inspectors of Elections are not county officers but are deputy state officers, being deputies of the State Supervisors of Elections, then this act is plainly not applicable to them. Section 5660 as enacted, is plainly not applicable to state officers. This act is only applicable to any authority, officer or employe of a county or political subdivision or taxing district of the state.

It is therefore my opinion that section 5660 of the General Code, as enacted, is not applicable to the Board of Deputy State Supervisors and Inspectors of Elections.

The members of the Board of Deputy State Supervisors and Inspectors of Elections not being county officers, the question then arises whether contracts entered into by them for the expenses of conducting elections come within the provisions of sections 5660 and 5661 of the General Code. The answer to this question would be clear if it were not for certain sections of the General Code which require that these expenses be paid from the county treasury, and in some cases be allowed by the county commissioners.

Section 4821, General Code, reads in part 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."

Sections 4049-3, 4849-4 and 4852 read as follows:

"Sec. 4849-3. The said deputy state supervisors or supervisors and inspectors, as the case may be, shall fix the places of holding all elections in said precincts, provided that the polling places shall be located outside the grounds of said institution, and within one hundred feet thereof; shall appoint judges and clerks of election, provide and preserve suitable booths, ballot boxes and equipment in the manner they are authorized to do in registration cities; and do and perform the duties required by law of township trustees insofar as the holding of elections in said precincts is concerned."

"Sec. 4849-4. The expenses of all elections held in said precincts, including election officers, booths, ballot-boxes, equipment and supplies, shall be paid by the county commissioners, as other county election expenses are paid; and said expenses shall not be a charge upon the township as provided in sections 4991 and 5053 of the General Code."

"Sec. 4852. The deputy state supervisors of each county shall cause to be provided at the expense of the county a ballot box for each election precinct therein, and cause it to be deposited with the proper township or village clerk or city auditor. Each such officer shall cause a ballot box with a copy of this title to be delivered at each place of holding elections in his township or corporation as often as elections are held therein. After such election, such ballot box shall be forthwith returned to him by the judges of election for safekeeping. In registration cities, the care of the ballot boxes to be used at any election shall devolve upon the board of deputy state supervisors."

Sections 5044, 5048, 5050 and 5051 authorize the Deputy State Supervisors of

Elections to enter into contracts for supplying the necessary voting shelves, poll books and tally sheets, ballots and other supplies.

Section 5052 provides:

“All expenses of printing and distributing ballots, cards of explanation to officers of the election and voters, blanks and other proper and necessary expenses of any general or special election, including compensation of precinct election officers, shall be paid from the county treasury, as other county expenses.”

In interpreting these sections the Attorney General has in the past held that the payment of certain obligations so incurred by the Board of Deputy State Supervisors shall be paid from the county treasury only on approval of the county commissioners.

Opinions of Attorney General, 1913, p. 1401;

Opinions of Attorney General, 1920, p. 3;

Opinions of Attorney General, 1921, p. 927.

The question presented, however, by the terms of Senate Bill 94 is somewhat different. The fact that the county commissioners must allow a claim for the payment of election expenses which have been incurred by the Deputy State Supervisors of Election may be regarded as an additional safeguard thrown around the expenditure of public funds. The contracts are in fact made by the board of elections.

In connection with this question also, should be read section 2460 of the General Code. The first sentence of this section reads:

“No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim.”

This section seems to be a recognition of the fact that certain items of expense may be paid without the allowance by the county commissioners. The salaries of the election officers are fixed by law, and the expense of printing ballots is determined by the Deputy State Supervisors of Elections on the basis of bids formally submitted. The number or quantity of supplies needed for an election, and the prices to be paid, therefore, must necessarily be determined by the deputy state supervisors of elections.

The case of the *State of Ohio ex rel. vs. Frank Ratterman*, 3 O. C. C., 626, might seem on casual examination to be contrary to the opinion herein expressed. This case was decided while section 2928 of the Revised Statutes, now section 4852 of the General Code, was in the form in which it was passed by the 68th General Assembly April 12, 1889, and provided that the sheriff should cause the ballot boxes to be provided, but did not specifically authorize the sheriff to determine the amount to be paid for them. It should also be noted that both section 4852, General Code, and section 2460, General Code, upon which the court based its opinion in this case, have since that time been materially altered.

It would seem, therefore, from these considerations that it was not the intent of the General Assembly in enacting Senate Bill 94, that the provisions thereof should apply to the expenses to be incurred by the boards of elections in the conduct of elections required by the statute and by the constitution.

This view is further strengthened by a consideration of facts which have been brought to our attention concerning the question you submit. It appears that in many counties of the state an application of the provisions of Senate Bill 94 to boards of elections would result in the impossibility of holding elections in those counties.

In view of the fact that the holding of elections is fundamentally necessary for the proper conduct of government, any construction of a statute which would result in making elections impossible, should be avoided. The constitution in mandatory terms, article X, section 2, and article XVII, section 1, provide for the holding of elections, and this mandate should be taken into consideration in construing the action of the General Assembly.

You are therefore advised that the provisions of Senate Bill 94, enacted by the 86th General Assembly, do not apply to the expenses necessarily incurred by boards of election in conducting elections as prescribed by statute, and contracts therefore may be made without the certificate of the auditor that funds are available to pay such obligation. If in fact funds are not in the treasury to meet these obligations, they will nevertheless constitute a valid claim against the county, for the payment of which provision must be made by the county commissioners through the levy of the proper tax therefor.

Respectfully,
 C. C. CRABBE,
Attorney General.

2845.

APPROVAL, LEASES MIAMI AND ERIE, OHIO, AND HOCKING CANALS;
 ST. MARYS, PORTAGE, INDIAN, AND BUCKEYE LAKES.

COLUMBUS, OHIO, October 7, 1925.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:— I have your letter of September 17, 1925, in which you enclose the following leases in triplicate for my approval:

<i>Miami and Erie Canal</i>	<i>Valuation</i>
The Ohio Bell Telephone, conduit right of way -----	\$ 200.00
Mrs. Charles Dupont -----	200.00
Wm. H. Johnson and John R. Goudie, land lease -----	8,333.34
The Celina Stearic Acid Co., water lease -----	1,333.34

<i>Ohio Canal</i>	
The Massillon Water Supply Company, Pipe Line Right of Way -----	200.00
The Canal Fulton Lake and Improvement Company, land lease---	400.00
C. E. Haynes, land lease -----	600.00
Mrs. Annie McClish, land lease -----	266.66
E. D. Hartley, land lease -----	245.00
Dr. J. R. McElroy, land lease -----	200.00
The City of Massillon, Ohio, land lease -----	200.00