

973

REGISTRATION—STATUTES WHICH PROVIDE FOR REGISTRATION OF ELECTORS—NO PROVISION TO PUBLISH NOTICE OF TIME OR PLACE OF REGISTRATION—EXPENSE INCURRED FOR PUBLICATION UNAUTHORIZED AND ILLEGAL.

SYLLABUS:

The statutes relative to registration of electors make no provision for publishing notice of the time or place of registration, and in the absence of such provision any expense incurred for such publication is unauthorized and illegal.

Columbus, Ohio, December 1, 1951

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, reading as follows:

“We recently received a letter from one of our county examiners, which reads as follows:

‘The Auditor’s Office has confronted us with the question of the legality of paying several hundred dollars of advertising bills incurred by the election board in connection with general registration (outside cities previously registered).

‘The absence of any special provision as to notice of such general registration authorized in Sec. 4785-36, compels a reference to the general provisions contained in the election laws. Is Section 4785-5 controlling? Or is such advertising entirely unauthorized? If it is authorized under Section 4785-5, then should the board follow the provisions of said section, that is “by one insertion in a (one) newspaper, (not radio) published in the county (not Summit County)?”

‘The bills presented to us include every newspaper published in the county, two broadcasting stations and the Akron Beacon-Journal.’

“How much of such advertising expense, if any, is legal?”

Provisions for registration of voters are contained in Sections 4785-34

to 4785-60, inclusive, of the General Code. Section 4785-34 reads, in part, as follows:

“In every city which at the last preceding federal census had, or which at any local, state, or federal census provided by law, shall have reached a population of sixteen thousand (16,000), or more, the board of elections shall establish and maintain, in the manner herein provided, a registration of all the qualified electors of such city.

“Any municipality of less than sixteen thousand (16,000) population may, by ordinance, elect to become a registration municipality. When such ordinance is adopted the board of elections shall establish and maintain a registration of voters as in the case of registration cities. The board of elections, in a county containing a registration city, when it is deemed necessary to prevent fraud in elections, may require registration of voters in suburban municipalities, or territory contiguous or adjacent to such registration city. The board of elections of a county contiguous to a county containing a registration city, when it is deemed necessary to prevent fraud in elections, may require registration of voters in precincts adjoining and contiguous to such adjoining county. The board of elections of any county may, by the vote of a majority of its members, establish and maintain registration of all the qualified electors of such county. * * *”

Section 4785-36, General Code, reads as follows:

“The board shall provide such printed forms, blanks, supplies and equipment, and prescribe such reasonable rules and regulations as are necessary to carry out the provisions herein relating to registration. In precincts which shall hereafter become registration precincts the first general registration of all qualified electors shall be held as the board may determine, either on Thursday and Saturday in the eleventh week and on Wednesday in the tenth week or on Thursday and Saturday in the seventh week and on Wednesday in the sixth week preceding the next general election, thereafter, from 10 a. m. to 2 p. m. and from 4 p. m. to 9 p. m. and thereafter no general registration shall be held in such precincts except as provided herein.”

It will be noted that in neither of these sections is there any reference to the publication of notice of the time when, or place where registration may be made, nor is there any reference whatever in any of the statutes relating to the subject of registration, to the publication of any such notice.

We do find running through the statutes relative to elections, certain provisions requiring publication of notices. More frequently, we find

provisions requiring certain notices or certain lists to be posted at or near voting places.

Section 4785-5, General Code, to which you refer, reads as follows :

“At least ten days before the time for holding an election the board shall give public notice by a proclamation, posted in a conspicuous place in the court house and city hall; or *by one insertion in a newspaper published in the county*; and if no newspaper is published in such county, then in a newspaper of general circulation therein. *Such newspaper notice shall not exceed six inches in length of double column width.*” (Emphasis added.)

It is to be noted that this section refers only to the holding of an election, and has nothing to do with registration. It is also to be observed that the General Assembly was careful to limit this notice to one insertion in a newspaper published or of general circulation in the county, and further, it expressly restricted the size of such notice to six inches in length of double column width. It is well settled that where a statute requires and specifies the extent of publication of any notice, public officials charged therewith are without authority to exceed the limit prescribed by the statute.

In the case of *Vindicator Printing Company v. State*, 68 Ohio St., 362, it was held :

“Where the number of publications of a sheriff’s election proclamation or other public notice, is fixed by statute, there is no authority in the board of county commissioners, or other county officer, to contract for publications in excess of the number directed by statute. The board is also without authority to allow a claim for such excessive publications, and the allowance of such claim does not bind the county. Nor is authority to adjudicate and allow such claim given by the fact that with the charge for unauthorized publications there is, on the same paper, a charge for a publication which is authorized by statute.”

The creation of boards of elections and the appointment of their members and definition of their powers are wholly matters within the authority of the General Assembly, and it has prescribed their powers and duties with great minuteness. In this connection, we may note the provisions of the statute as to the general duties of such boards. Section 4785-13, General Code, provides in part :

“The boards of elections within their respective jurisdictions

by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this act, and shall perform all the duties imposed by law which shall include the following:
* * *

“b. To fix and provide the places for registration, when required, and for holding primaries and elections.

“* * * e. To make and issue such rules, regulations and instructions, not inconsistent with law, or the rules established by the chief election officer, as they may deem necessary for the guidance of election officers and voters.

“f. To advertise and contract for the printing of all ballots, and other supplies used in registrations and elections.

“g. To provide for the issuance of *all notices, advertisements, and publications concerning elections required by law.*
* * *” (Emphasis added.)

It is a well settled rule that public officers whose offices are created by the legislature have only such powers as are expressly delegated to them by statute and such as are necessarily implied from those so delegated. 32 Ohio Jurisprudence, p. 933; Guckenberger v. Dexter, 5 Ohio N. P., 429, affirmed 60 Ohio St., 353; Tiffin v. Shawan, 43 Ohio St., 178; Ireton v. State, 81 Ohio St., 562; Frisbey v. East Cleveland, 98 Ohio St., 260.

Section 4785-5, General Code, above quoted, providing for publication of notice of elections, affords no authority whatever for publication of a notice of the time or place of registration.

It follows, therefore, that there is no authority in the law for the publication of a notice either of general registration or of the initial registration in a new district where it has been ordered.

The requirement or failure to require publication of notice of any public matter, is a matter of public policy which is left to the discretion of the legislature, and any defect must be a matter for legislative correction. All persons are presumed to take notice not only of the passage of public laws but of orders made by authorized boards or officials. It will be observed that there is no provision either in the Constitution or statutes requiring laws enacted by the General Assembly to be published prior to or as a condition to their taking effect. It is said in McQuillan on Municipal Corporations, Volume 5, Section 16.76 that publication, or notice of pendency of ordinances, unless required by charter or statute, is not necessary to their enactment or validity.

In view of the fact that the publication of notice of registration of electors is not authorized by law, it is plain that any expense incurred by reason of such publication would be an illegal expenditure of public money.

Respectfully,

C. WILLIAM O'NEILL

Attorney General