

the conditions and restrictions therein contained, that the same are in conformity with Section 471, General Code, under the authority of which this lease is executed, and with other statutory enactments relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3550.

COUNTY BOARD OF ELECTION—MEMBERS—ELECTION EXPENSES—PAID FROM COUNTY TREASURY, SAME MANNER AS OTHER EXPENSES—NOT CHARGEABLE TO BOARD OF ELECTION.

*SYLLABUS:*

*Expenses incurred in the election of members of a county board of education are not chargeable to the county board of education, but are to be paid from the county treasury in the same manner as other county expenses are paid.*

COLUMBUS, OHIO, January 9, 1939.

HON. KARL T. STOFFER, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“The Clerk of the Board of Elections, in making his apportionment of the costs of the election of the fall of 1937, assessed as its proportion, against the Columbiana County Board of Education, the sum of \$15.54. They have refused to pay the same, giving as their reason for not paying it that they no longer receive county funds, but receive all their money from the State.

It is the contention of the Board of Elections that, since the Board of Education for Columbiana County is on the ballot and, therefore, is a separate political entity or subdivision, it should stand its proportionate share of the cost of the ballot in subsequent elections.

Will you be kind enough to tell me whether the contention of the Board of Elections is correct or not, and whether said bill should be legally paid by the Board of Education?"

I assume that the charge of \$15.54 here in question is for expenses incurred in electing members of the county board of education in the odd numbered years, in accordance with the provisions of Section 4728-1 and 4729, General Code.

Section 4785-20, General Code, provides in part, as follows:

"The expenses of the board in each county shall be paid from the county treasury, in pursuance of appropriations by the county commissioners, in the same manner as other expenses are paid. If the county commissioners fail to appropriate an amount sufficient to provide for the necessary and proper expenses of the board, the board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. Payments shall be made upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor. The board of elections shall not incur any obligation involving the expenditure of money unless there are monies sufficient in the funds appropriated therefor to meet such obligations. *Such expenses shall be apportioned among the county and the various subdivisions as hereinafter provided, and the amount chargeable to each subdivision shall be withheld by the county auditor from the monies payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year the board shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year.*

a. The entire compensation of members of the board and of the clerk, deputy clerk and other assistants and employes in the board's offices; the expenditures for the rental, furnishing and equipping of the offices of the board and for the necessary office supplies for the use of the board; the expenditures for the acquisition, repair, care and custody of polling places, booths, guard rails and other equipment for polling places; the cost of poll books, tally sheets, maps, flags, ballot boxes, and all other permanent records and equipment; the cost of all elections held in and for the state and county; *and all other expenses of the board which are not chargeable to a political subdivision in accordance with this section, shall be paid in the same manner as other county expenses are paid.*

b. The compensation of judges and clerks of elections; the cost of renting, moving, heating and lighting polling places and removing ballot boxes and other fixtures and equipment thereof; the cost of printing and delivering ballots, cards of instruction and other election supplies; and all other expenses of conducting primaries and elections in the odd numbered years shall be charged to the subdivisions in and for which such primaries or elections are held.” (Italics, the writer’s.)

It is significant to observe that the manner in which expenses for elections shall be paid is that, the board is to submit to the taxing authority of each subdivision, an estimate of the amount to be withheld for the next fiscal year for budget and appropriation purposes; and that the amount chargeable to each subdivision is to be deducted from the subdivision’s tax settlement share.

It therefore becomes important to determine whether or not a county board of education is such a subdivision that the provisions as to payment and deductions are applicable.

Section 4785-3, General Code, reads in part, as follows:

“The terms used in this act and in the statutes relating to elections shall have the meaning herein defined, unless other meaning is clearly apparent in the language or context. \* \* ”

(q) The term ‘political subdivisions’ shall mean a county, township, city, village or school district. \* \* ”

The term “school district” can be said to include a county school district by virtue of the provisions of Section 4679, General Code, which reads as follows:

“The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts, and county school districts.”

However, in Section 5625-1, General Code, a subdivision is defined as follows:

“ ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation or township in the state.”

By virtue of the definition of a subdivision in Section 5625-1, *supra*, a county board of education is not authorized to levy taxes or to adopt a tax budget for the next fiscal year.

Since the enactment of the "New School Foundation Program Law" (H. B. No. 466), funds for the use of the county board of education come from the State Public School Fund.

Section 7595-1i, General Code, reads as follows:

"On or before the first day of December, 1935, and each year thereafter, each county board of education shall prepare a budget of operating expenses for the ensuing year for the county school district and shall certify the same to the director of education who shall apportion the cost represented by such budget among the various districts of the county school districts on the basis of pupils in average daily attendance. The amounts so apportioned shall be certified to the clerks of the various school districts and in the case of each district such amount shall be deducted by the director of education from the share of the district in the state public school fund.

The director of education shall certify to the auditor of state the total of such deductions of the districts of the county school district; whereupon the auditor of state shall issue his warrent in such amount on the treasurer of state in favor of the county board of education of each county to be deposited to the credit of a separate fund, hereby created, to be known as the county board of education fund."

In an opinion rendered by my immediate predecessor in office, on March 23, 1936, and numbered 5295, in discussing Section 7595-1i, *supra*, he stated:

"It clearly appears from the above statute that it is the intention of the law that funds for the use of a county board of education are to be made available from the State Public School Fund distributable to local districts as provided by Section 7595-1, General Code, whereas formerly these funds were derived from the proceeds of local taxation for school purposes and deducted by the county auditors from the proceeds of those taxes before distribution to the local school districts within the several county school districts, in accordance with Sections 4744-1, 4744-2 and 4744-3, General Code, which sections have not been expressly repealed."

It is obvious that since a county board of education does not receive any funds derived from proceeds of local taxation for school purposes and such county board of education is not authorized to levy taxes or to adopt a tax budget, it would be impossible to apply

the provisions of Section 4785-20, General Code, relating to withholding the expense incurred in electing members of the county board of education from the county board of education's tax settlement share.

From a reading of Section 7595-1i, supra, it is to be observed that the county board of education prepares, certifies and presents a budget of operating expenses to the director of education; that, the amount called for in the budget is apportioned among the several school districts in the county on the basis of the total number of pupils in average daily attendance in each of the districts under the supervision of the county board of education; and that the money from the State Public School Fund is paid directly by the treasurer of state to the credit of the county board of education fund in each county.

There are no express specific provisions as to what expenditures are to be included in the budget of operating expenses. However, Section 4743, General Code, authorizes payment of compensation to an assistant county superintendent.

Section 4744-1, General Code, authorizes payment of salary and traveling expenses to a county superintendent and stenographic or clerk service.

Section 4744-3a, General Code, authorizes a county board to pay for printing of programs, examination supplies, educational meetings required by law, etc. This section was construed in an opinion appearing in Opinions of the Attorney General for 1935, Volume II, page 1297, and it was held as follows:

“A county board of education is authorized by Section 4744-3a, General Code, to pay for the printing of enrollment cards, attendance registers, grade cards, reports of tests and examinations, standardized reports of daily work of pupils, individual certificates of promotion of pupils, diplomas and any other necessary supplies for the use of the county superintendent of schools and local principals and teachers throughout a county school district, which supplies are necessary for carrying out the duties imposed by law upon the county superintendent of schools in the classification and promotion of pupils and the supervision of the schools in a county school district.”

From the statutes which relate to expenditures a county board of education is authorized to make, it is evident that such expenditures are limited to personal services for county superintendents, county assistant superintendents, stenographers and clerks, traveling expenses to the county superintendent, expenses for educational meet-

ings required by law, and the expenses for supplies for the use of the county superintendent, local principals and teachers throughout the county school district that are necessary for carrying out the duties imposed by law upon the county superintendent.

It must be said that the county board of education would not have any authority to include expenses for the election of members of the county board of education within its budget and have the same paid from its share received from the State Public School Fund, and deposited in the county board of education fund.

It therefore must be concluded that said expenses incurred for the election of members of the county board of education can be considered as coming within the provisions of paragraph "a" of Section 4785-20, supra, in being "costs of elections held in and for the county," or "expenses of the board which are not chargeable to a political subdivision," and are to "be paid in the same manner as other county expenses are paid."

Therefore, in specific answer to your question it is my opinion that, the \$15.54 representing the proportionate expenses incurred by the board of elections in the election of members to the county board of education, cannot be withheld or deducted by the county auditor from the county board of education fund.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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3551.

APPROVAL—GRANT OF EASEMENT, STATE OF OHIO, THROUGH CONSERVATION COMMISSIONER, BY ROY W. GRIFFITH, TRACT OF LAND, MARION TOWNSHIP, FAYETTE COUNTY, OHIO, FOR PUBLIC FISHING GROUNDS.

COLUMBUS, OHIO, January 9, 1939.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement, No. 346, executed to the State of Ohio by Roy W. Griffith, conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in Marion Township, Fayette County, Ohio.