

ties of the resolution of purchase as certified by you to this department. The transcript of the proceedings as submitted for this issue of bonds is therefor disapproved, and you are advised not to purchase the bonds.

Respectfully,

C. C. CRABBE,

Attorney General.

2638.

CERTIFICATE OF COUNTY AUDITOR NOT NECESSARY BEFORE BOARD OF DEPUTY STATE SUPERVISORS AND INSPECTORS OF ELECTIONS ENTERS INTO CONTRACTS FOR CONDUCT OF AN ELECTION.

SYLLABUS:

It is not necessary to have the certificate of the county auditor, as required by section 5660, General Code, before the board of deputy state supervisors and inspectors of elections may enter into contracts for the conduct of an election.

COLUMBUS, OHIO, July 3, 1925.

HON. ALBERT H. SCHARER, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of your communication, as follows:

“The board of deputy state supervisors and inspectors of elections for Montgomery county, Ohio, has requested an opinion from this office upon the question as to whether they have the legal authority to contract for the printing of ballots and other necessary election supplies in order to conduct the primary election to be held August 11, 1925, when there is no money in the election fund at the present time, and no money available for such purpose.

“They call our attention to the fact that it is compulsory upon them to hold said primary election, and at the same time cite section 5660 of the Ohio General Code, which provides that the commissioners of a county shall not enter into any contract involving the expenditure of moneys for supplies unless the auditor of the county first certifies that the money required for the payment of such obligation is in the county treasury to the credit of the fund from which it is to be drawn, or has been levied and in process of collection.

“The board of county commissioners in order to conduct previous elections found it necessary to borrow the sum of thirty-five thousand dollars (\$35,000.00) pursuant to the provisions of section 5655 of the Ohio General Code, and last March at the time of the semi-annual distribution of taxes they renewed a six months' certificate of indebtedness, which certificate was given to a local bank in order to meet the expenses of the board of election, and a resolution was passed by the board of county commissioners appropriating the sum of thirty-five thousand dollars (\$35,000.00) for the purpose of paying such certificate at maturity. We are advised by the board of

county commissioners of Montgomery county, Ohio, that there are no other moneys available in any other fund that might be transferred to the depleted elections fund, all of such other funds being practically exhausted by reason of a similar condition.

"We therefore request your opinion as to whether a sufficient emergency might exist by reason of the condition heretofore set forth which would permit the board of elections to enter into contracts for the printing of ballots and necessary election supplies without the auditor first certifying that the money is in the treasury to the credit of the election fund. It is necessary for the board of elections to enter into an immediate contract for election supplies in order to have the same for the primary election in August of this year, and the board has requested us to obtain from you an opinion at your earliest convenience."

The question submitted in your communication is as to whether the board of deputy state supervisors and inspectors of elections may enter into contracts for the printing of ballots and necessary election supplies without the county auditor first certifying that the money is in the treasury to the credit of the election fund.

Section 4801, General Code, provides:

"In addition to the powers and duties conferred upon them by the preceding section, the state supervisor and inspector of elections shall have all the rights, powers and duties conferred and imposed by law upon the state supervisor of elections, and boards of deputy state supervisors and inspectors of elections shall have all the rights, powers and duties conferred and imposed by law upon boards of deputy state supervisors of elections, as hereinafter provided."

The powers and duties conferred and imposed by law upon boards of deputy state supervisors and inspectors of elections are provided by section 4819, General Code.

Section 4819, General Code, provides as follows:

"The deputy state supervisors for each county shall advertise and let the printing of the ballots, cards of instruction and other required books and papers to be printed by the county; receive the ballots from the printer, and cause them to be securely sealed up in their presence in packages, one for each precinct, containing the designated number of ballots for each precinct, and make the necessary endorsements thereon as provided by law; provide for the delivery of ballots, poll books and other required books and papers at the polling places in the several precincts; cause the polling places to be suitably provided with booths, guard rails and other supplies, as provided by law, and provide for the care and custody of them during the intervals between elections; receive the returns of elections, canvass them, make abstracts thereof, and transmit such abstracts to the proper officers at the times and in the manner provided by law, and issue certificates to persons entitled to them."

These two sections make it a part of the duty of the board of deputy state supervisors and inspectors of elections to enter into all contracts necessary to provide for each election. There is no provision of the General Code for the board of deputy state supervisors and inspectors of elections submitting contracts entered into

under the above section to the county commissioners for their approval before entering into the same.

The members of the board of deputy state supervisors and inspectors of elections are not county officers. In the case of *State, ex rel. vs. Craig*, 10 Ohio Des. 577, the court say:

"Deputy state supervisors of elections, being responsible to the secretary of state as principal election officer, do not act in an independent capacity and for this reason lack the distinguishing characteristics of public officers. They are not officers, within the legal definition of that term, and, though their jurisdiction may be coterminus with that of the county, they are not county officers or within section 1, article 10, of the constitution, providing that the general assembly shall provide by law for the election of such township and county officers as may be necessary."

Section 5660, General Code, in part provides:

"The commissioners of a county, the trustees of a township and the board of education of a school district, shall not enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the appropriation or expenditure of money, unless the auditor or clerk thereof, respectively, first certifies that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose; * * *"

The only persons, under this section, who are prohibited from entering into a contract, agreement or obligation without such certificate, are the commissioners of the county, the trustees of the township and the board of education, and it is believed that this section is not applicable to other officers.

In the case of *Knauss vs. Bader*, 11 Ohio N. P. (n. s.), 495, which was a case involving the question of whether township trustees, while acting as the board of health of such township, were required to have furnished them a certificate under this section before entering into any contract or obligation. The court in this case held:

"In arranging for the care of persons suffering from a contagious disease, township trustees act as a board of health, and they are liable officially for indebtedness so incurred, notwithstanding failure on the part of the clerk of the township to certify that funds sufficient to meet the proposed expenditure are in the treasury and unappropriated."

It is therefore my opinion that it is not necessary to have the certificate of the county auditor, as required by section 5660, General Code, before the board of deputy state supervisors and inspectors of elections may enter into contracts for the conduct of an election.

Respectfully,
C. C. CRABBE,
Attorney General.