

Note from the Attorney General's Office:

1928 Op. Att'y Gen. No. 28-2629 was overruled in part by 2012 Op. Att'y Gen. No. 2012-023.

2629.

ELECTION—CONTRACT FOR EXPENSES—CERTIFICATE OF INDEBTEDNESS—WHEN COUNTY COMMISSIONERS MUST PROVIDE FUNDS.

SYLLABUS:

1. Section 5625-33, General Code, is not applicable to contracts or orders for the payment or expenditure of money made by a board of deputy state supervisors of elections in conducting elections.

2. Because of the express limitation contained in Section 2293-4, General Code, a board of county commissioners may not prior to January 1, 1929, issue a certificate of indebtedness in anticipation of the February tax settlement, 1929, for the purpose of providing funds to pay the necessary expenses of conducting the election to be held in November, 1928. A board of deputy state supervisors of elections, however, is authorized to make contracts and give orders involving the expenditure of money to cover the necessary expenses of conducting said election, notwithstanding the fact that sufficient funds are not now in the county treasury to pay such obligations so incurred, and it is the duty of the county commissioners to pay such obligations when funds shall have become available.

COLUMBUS, OHIO, September 27, 1928.

HON. JOHN W. DUGAN, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“We have not sufficient funds to defray the necessary expenses of the election board, which will accrue on account of the presidential election. We will be short about \$5,000.00, which will be required to pay judges and clerks and for necessary printing and stationery.

Concluding from an opinion which you rendered some time ago, I take it that the election board could contract for the necessary supplies and help without having funds available, as the law requiring a certificate showing that the money was in the proper fund and unappropriated for any other purpose does not apply.

Could the county commissioners issue a certificate of indebtedness to come due within six months to take care of this deficiency?”

Section 5625-33, General Code, as enacted in House Bill No. 80, 112 Ohio Laws, page 406, provides among other things:

“No subdivision or taxing unit shall:

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

(b) Make any expenditure of money unless it has been appropriated as provided in this act.

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

(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 (or in the case of a

continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), 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. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. In case no certificate is furnished as hereinbefore required, upon receipt by the taxing authority of the subdivision or taxing unit, of a certificate of the fiscal officer that there was at the time of the making of such contract or order, and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the issuance of a warrant in payment of amounts due upon such contract; * * *"

It may be said that the board of deputy state supervisors of elections is neither a subdivision nor a taxing unit as referred to in the above mentioned section.

This department had under consideration in 1925, Section 5660, General Code, which was the predecessor of the above mentioned Section 5625-33. In the Opinions of the Attorney General for 1925 there is an opinion at page 656, the syllabus of which reads:

"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."

On page 658 of the opinion it was said:

"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."

In Opinion No. 2638, Opinions, Attorney General, 1925, page 479, the syllabus is in the following language:

"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."

Section 4821, General Code, provides 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
* * *"

Section 5052, General Code, provides as follows:

"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 the opinion reported in Opinions of the Attorney General for 1925, page 656, this language is used at page 660:

"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."

It is therefore my opinion that it was not the intent of the Legislature in enacting Section 5625-33, General Code, that the provisions thereof should apply to the expenses to be incurred by the boards of elections in the conducting of elections required by the statute and by the Constitution. Were it otherwise, it might and probably would result in the impossibility of holding elections in some of the counties of the state. Under our scheme of government the holding of elections is necessary, and any construction of the statutes which might result in making elections impossible in certain cases should be avoided. Section 2, Article X and Section 1, Article XVII of the Constitution of Ohio providing for elections are mandatory in their terms.

In view of the foregoing, it is my opinion that Section 5625-33, General Code, is not applicable to contracts or to orders for the payment or expenditure of money made by the board of deputy state supervisors of elections in conducting elections, and that if the necessary funds are not in the treasury to meet such obligations, they will, nevertheless, constitute a valid claim against the county, for the payment of which provision is required to be made by the county commissioners.

You ask, can the county commissioners issue a certificate to come due within six months to provide funds to pay the expenses of conducting an election to be held this fall.

Your attention is directed to Section 2293-4 of the General Code as enacted by the 87th General Assembly (112 v. 365), which reads as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

In so far as the question here is concerned, the provisions of this statute are so plain that no interpretation is necessary. You will observe that by the terms of this section, in anticipation of the collection of current revenue in and for any fiscal year the taxing authority of any subdivision may borrow money and issue notes therefor subject to the limitations prescribed by such section; provided, however, that no subdivision is authorized to "borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such settlement." This provision last quoted would clearly prohibit your county commissioners borrowing money in anticipation of the February tax settlement, and it is my opinion that your question must therefore be answered in the negative.

In conclusion, and in specific answer to your question, it is my opinion that because of the express limitation contained in Section 2293-4, General Code, a board of county commissioners may not prior to January 1, 1929, issue a certificate of indebtedness in anticipation of the February tax settlement, 1929, for the purpose of providing funds to pay the necessary expenses of conducting the election to be held in November, 1928. A board of deputy state supervisors of elections, however, is authorized to make contracts and give orders involving the expenditure of money to cover the necessary expenses of conducting said election, notwithstanding the fact that sufficient funds are not now in the county treasury to pay such obligations so incurred, and it is the duty of the county commissioners to pay such obligations when funds shall have become available.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2630.

HUMANE SOCIETY AGENT—PAY FROM COUNTY COMMISSIONERS
 DOES NOT PRECLUDE FURTHER PAYMENT FROM SOCIETY.

SYLLABUS:

When, in accordance with the provisions of Section 10072, General Code, a board of county commissioners has appropriated money to be paid to a humane society agent, such humane society is not thereby precluded from paying such agent an amount as salary in addition to such amount appropriated by said commissioners.