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SYLLABUS:

1. Under Section 3501.29, Revised Code, a board of elections may pay to the owner of the premises, in addition to a reasonable rental, the cost of liability insurance to cover the increased risk of liability resulting to the owner of the premises for the period such premises are used for election purposes.

2. The authority under Section 3501.29, Revised Code, to pay “the cost of liability insurance covering the premises for the period such premises are used for election purposes” does not encompass purchase of liability insurance by a board of elections.

Columbus, Ohio, February 20, 1963

Hon. G. William Brokaw
Prosecuting Attorney
Columbiana County
Lisbon, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The Board of Elections of Columbiana County has requested that I seek your Opinion on this interpretation which you place on the following phrase which is contained in Section 3501.29 of the Revised Code. ‘When polling places are established in private buildings, the Board may pay a reasonable rental therefor, *and also the cost of liability insurance covering the premises when used for election purposes.*’

“The underlined portion of the statute above was added to the law by the 1957 legislature, effective January 1, 1958. There seem to be no Opinions from your office or other precedents to follow in interpreting the same. If I am correct in my understanding of the law, a Board of Elections has no liability to insure against in the conduct of election. Therefore, the question arising is: ‘what is the meaning of the phrase “covering the premises when used for election purposes,” as it is used in this statute.’

“The Board of Elections in this County and probably in most counties, rents private dwellings in various precincts throughout the County for election purposes. There is, of course, some difficulty in finding places which can be used for voting places, causing the election Board to resort to private dwellings and other private buildings for the purpose. If an individual owner is liable for accidents on the premises at such times, naturally the difficulty in renting polling places will be even greater.

“Therefore, your interpretation is respectfully sought in this matter, to determine whether or not the Board of Elections may purchase the liability insurance mentioned in the statute to cover the individual owners liability on his premises when the same are used for voting purposes.”

Section 3501.29, Revised Code, reads in pertinent part:

“* * * Upon application of the board of elections, the authority which has the control of any building or grounds

supported by taxation under the laws of this state, shall make available the necessary space therein for the purpose of holding elections and adequate space for the storage of voting machines, without charge for the use thereof. A reasonable sum may be paid for necessary janitor service. When polling places are established in private buildings, the board may pay a reasonable rental therefor, *and also the cost of liability insurance covering the premises when used for election purposes.* * **

Your inquiry is concerned with the meaning of the above emphasized portion of Section 3501.29, *supra*, particularly in regard to whether a board of elections may purchase liability insurance to cover the individual owner's liability on his premises when they are used for election purposes.

In construing the meaning of the words "liability insurance covering the premises when used for election purposes," I direct your attention to 29A, American Jurisprudence, Insurance, Section 1359, page 474, where it is stated:

"A very common form of liability insurance, generally referred to by the more comprehensive term of 'public liability' insurance, is the one which insures the owner, occupier, or operator of real property against liability incident to his ownership or to the use of the premises. The extent of coverage under this type of policy depends entirely upon the specific provisions of the policy and the circumstances surrounding the accident or injury.* * *

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The meaning of the words "liability insurance" as used in Section 3501.29, *supra*, is not completely clear, since liability insurance is a term of broad definition in the insurance field. However, since the section refers explicitly to the use of premises, I am of the opinion that the legislature intended by that phrase to authorize boards of election to pay the cost of that type of liability insurance, more commonly known as "public liability" insurance, which "insures the owner, occupier, or operator of real property against liability incident to his ownership or to the use of the premises."

Although boards of elections are authorized under Section 3501.29, *supra*, to pay the cost of liability insurance, I am of the opinion that such section does not purport to authorize boards of election to pay the cost of liability insurance to insure themselves

from liability arising from the use of the premises they rent and use for election purposes. As you point out in your request, boards of election have no liability to insure against for the reason that such boards are immune from suit. See 49 Ohio Jurisprudence 2d, Section 28, page 681. Therefore, in Section 3501.29, *supra*, the legislature could only have been referring to the liability of the owner of the premises. In fact, it should be pointed out that if an election board, immune from suit, attempted to pay the cost of liability insurance under Section 3501.29, *supra*, which purported to insure the board against liability, such a payment would constitute an unlawful expenditure of public funds. See Opinion No. 1806, Opinions of the Attorney General for 1958, page 125; Opinion No. 5949, Opinions of the Attorney General for 1943, page 181.

In authorizing boards of election under Section 3501.29, *supra*, to pay the cost of liability insurance, the legislature has seemingly recognized the increased risk of liability resulting to the owner of the premises when such premises are used for election purposes. Undoubtedly, such authorization has the effect of facilitating the rental of premises used for election purposes by such boards. However, it should be pointed out that under the section the authority is to *pay* the cost of liability insurance and not to *purchase* liability insurance. Thus, in addition to a reasonable rental, a board of elections may pay to the owner of the premises the cost of liability insurance for the period such premises are used for election purposes, but such board on its own initiative may not purchase the insurance covering the owner.

In conclusion, therefore, it is my opinion and you are advised that:

1. Under Section 3501.29, Revised Code, a board of elections may pay to the owner of the premises, in addition to a reasonable rental, the cost of liability insurance to cover the increased risk of liability resulting to the owner of the premises for the period such premises are used for election purposes.

2. The authority under Section 3501.29, Revised Code, to pay "the cost of liability insurance covering the premises for the period

such premises are used for election purposes” does not encompass purchase of liability insurance by a board of elections.

Respectfully,

WILLIAM B. SAXBE

Attorney General