

While the Legislature has seen fit to provide that these associations "shall be deemed 'non profit'", it is obvious that although they may be actually non profit corporations for some purposes, they are not corporations not for profit in the sense that a corporation organized for the purpose of charity, for instance, is a corporation not for profit.

Provision was made for the incorporation of associations known as cooperative trade associations as early as 1867. Provisions for these associations are contained in Sections 10185 and 10186, General Code. Section 10186 provides that profits arising from the business may be divided among the stockholders from time to time in proportion to their purchases. Obviously these associations are in the true sense corporations for profit.

In view of the foregoing, I have little difficulty in concluding that simply because a cooperative agricultural association may have been incorporated prior to the enactment of Sections 10186-1, et seq., as a corporation for profit, it should not thereby be precluded from availing itself of the benefits of the present provisions relating to cooperative agricultural associations as provided in Section 10186-25.

The language of Section 10186-25, wherein it is provided that "any association organized under previously existing statutes" may be brought under the provisions of the act providing for cooperative agricultural associations, is very broad. Had the Legislature intended that the section should only refer to associations organized under the cooperative agricultural association act prior to its amendment in 1923, it would probably have said so. In my view, the language of Section 10186-25 includes any cooperative agricultural associations heretofore incorporated regardless of the particular sections of the law under which they might have been incorporated. The section only refers to "any association", and I think it is, therefore, clear that the reference is to any association of a similar nature or for a similar purpose to the cooperative agricultural associations now provided for in Sections 10186-1, et seq., heretofore organized.

Specifically answering your questions, it is my opinion that any corporation heretofore organized as an agricultural association for purposes similar to those for which a corporation may be incorporated under Sections 10186-1, et seq., may, under the provisions of Section 10186-25, become a cooperative agricultural association as therein provided.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1961.

ELECTION LAW—BOARD OF ELECTIONS—HOW PURCHASES OF SUPPLIES OTHER THAN BALLOTS TO BE MADE.

SYLLABUS:

1. *Purchases by the board of elections, in cases other than contracts for the printing of the ballots, are not required to be made in pursuance of advertisement and competitive bidding.*
2. *The provisions of Section 5625-33 of the General Code have no application to purchases made or contracts entered into by the board of elections.*
3. *When the election board orders necessary supplies or makes proper contracts for the printing of the ballots, payments therefor 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.*

COLUMBUS, OHIO, June 10, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which is as follows:

“The new election code, Section 4785, etc., provides in some instances how legal advertising shall be done for the purchase of ballots and certain supplies but does not provide as to the purchase of other supplies and necessities by Boards of Elections.

The question has arisen under both the election law and the general laws of Ohio, as to what amount or sum a Board of Elections can expend for purchases without legal advertising for bids on same, said purchases being of a different nature from those specifically provided for under the election law, such as the purchase of ballots.

Will you please give me your opinion as to just how purchases shall be made by the Boards of Elections outside of those specifically provided for by the election laws.”

Section 4785-114, General Code, specifically provides that the contract for the printing of ballots shall not be let until after ten days' notice has been published once in two leading newspapers published in the county; or upon notice given by mail, addressed to the responsible printing offices within the county. The section further requires the contract to be let to the lowest responsible bidder, etc.

As indicated in your communication, there is a definite provision requiring either advertising or mailed notice for competitive bids before the making of contracts in the printing of the ballots. However, you inquire with reference to other matters of expense. While paragraph (f) of Section 4785-13 provides “To advertise and contract for the printing of all ballots, and other supplies used in registrations and elections,” this provision is general and provides no method. Therefore, it must be construed to apply only in those cases wherein competitive bidding is otherwise required by law. In examining the statute I find no other provision requiring competitive bidding excepting in the case of the printing of the ballots.

The question now arises as to what requirements other than for competitive bidding must be met under existing law in connection with such contracts. In an opinion found in Opinions of the Attorney General for the year 1925, p. 656, a comprehensive discussion was given as to the method of payment of election expenses under the law as it then existed. It was expressly held in said opinion that the certificate formerly required by Sections 5660 and 5661 of the General Code were unnecessary with respect to contracts, agreements or obligations of or the order for the payment of expenditures of money by the Board of Deputy State Supervisors and Inspectors of Elections. It was further indicated in said section that probably such expenditures were not required to be allowed by the county commissioners under the provisions of Section 2460, General Code. It was pointed out that a member of the Board of Deputy State Supervisors and Inspectors of Elections is not a county authority, officer or employe, within the meaning of Section 5660 of the General Code. Without quoting from said opinion, it may be stated that the conclusion was reached therein that the officials functioning in connection with elections in counties were representatives of the State Supervisor of Elections, the Secretary of State, and, therefore, not to be in anywise regarded as county officials.

The question now arises as to whether the members of the Board of Elections functioning in counties under the new election code are county or district officers and also whether under the provisions of Section 5625-33, General Code, such officers are required to make a certificate before entering into a contract for election supplies

and expenses. An examination of Section 5625-33, General Code, discloses that it applies to subdivisions or taxing units. It inhibits any subdivision or taxing unit from making a contract or giving an order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision to the effect that the amount required to meet such obligation had been lawfully appropriated for such purpose and is in the treasury or in process of collection free from previous encumbrance. As above suggested, the question now arises whether the county board of elections is a taxing unit or subdivision. Section 5625-1, General Code, which defines a number of expressions used in the so-called budget law passed in 1927 in paragraph (a) thereof, defines subdivision in the following language:

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

Also, in paragraph (c) of said section taxing authority is defined:

“‘Taxing authority’ or ‘bond issuing authority’ shall mean in the case of any county, the county commissioners; in the case of a municipal corporation, the council or other legislative authority of such municipal corporation; in the case of a school district, the board of education; and in the case of a township, the township trustees.”

It will therefore clearly appear that unless members of the county board of elections are to be regarded as county officers, Section 5625-33, General Code, has no application.

In examining the present election law which became effective January 1, 1930, it will be noted that Section 4785-6, General Code, provides that the Secretary of State shall be chief election officer of the state. Section 4785-7, General Code, which defines his many duties, requires him to appoint all members of boards of elections; to advise with such members and prepare rules and regulations for conducting elections; to determine the forms of ballots, blanks, poll books, tally sheets, and certificates of election; to compel the observance, by election officers in the several counties, of the requirements of the election laws; to investigate the administration of election laws in any county.

Section 4785-8, General Code, provides for the appointment of four qualified electors of the county to constitute the election board. Said section provides that the members of the present boards of deputy state supervisors of elections and members of the boards of deputy state supervisors and inspectors of elections shall continue to act for the terms for which they were appointed, etc.

Section 4785-13, General Code, which defines the duties of county boards, among other things, requires such boards to perform such duties as may be prescribed by law or the rules of the chief election officer. Without further discussion, it may be said that the duties of the county board of elections are generally the same as those of the original board which it supplants. Therefore, it would appear that if the former boards were regarded as state officers, applying the same logic to the question before us, the conclusion must be reached that county election boards are exercising a part of the sovereign functions of the state and are to be regarded as state officials. It is true that the name has been changed but there is no especial magic in a name. It is believed that the duties and functions are the controlling factors in connection with a question of this character. If such officers are county officers in the technical sense, then it follows that under the provisions of the constitution such officers would have to be elected. As above stated, said officers are appointed by the Secretary of State and he is the chief election officer and the supervisor of such boards and the duties of such boards are similar to those which have heretofore been exercised by the deputy boards.

It would therefore clearly appear that Section 5625-33, General Code, has no application to contracts, obligations or expenditures made or created by the county board of elections.

Your attention is further called to Section 4785-18 of the General Code, which provides for the payment of the compensation of the board members in the following manner:

“* * * Upon the presentation of any such voucher or payroll the county auditor shall issue his warrant upon the county treasurer for the amount thereof as in the case of vouchers or payrolls for county offices and the treasurer shall pay the same. * * *”

Section 4785-20, General Code, which provides for the expenses of the board of elections generally, reads:

“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.

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 moneys 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 employees 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 of placing 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.

c. The cost of all special elections shall be charged against the subdivisions for and in which such elections are held.

d. The compensation of registrars; the cost of renting, hearing and lighting registration places; the cost of the necessary books, forms and supplies for the conduct of registration; and the cost of printing and posting precinct

registration lists; shall be charged to the subdivision in which such registration is held."

In analyzing the section last quoted, it will appear that such election expenses are paid in the same manner that other county expenses are paid, upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk upon warrants of the auditor. In comparing this section with the sections that were in effect at the time the opinion was written by the Attorney General, hereinbefore referred to, it will be observed that the general provisions are very similar. However, the method of payment probably is somewhat more definitely set forth. It is clear that such payments are not required to be submitted to the county commissioners, excepting, of course, the county commissioners are required to make appropriations. However, in the event that they fail to make sufficient appropriations, the board may apply to the court of common pleas, who shall make the same.

In view of the foregoing, it is my opinion that:

1. Purchases by the board of elections, in cases other than contracts for the printing of the ballots, are not required to be made in pursuance of advertisement and competitive bidding.

2. The provisions of Section 5625-33 of the General Code have no application to purchases made or contracts entered into by the board of elections.

3. When the election board orders necessary supplies or makes proper contracts for the printing of the ballots, payments therefor 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.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1962.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR
DUTIES—ELIZABETH CONWAY—MEREDITH E. PAVEY—CHARLES
A. BRACHER.

COLUMBUS, OHIO, June 10, 1930.

HON. JOHN W. PRUGH, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval three bonds, each for the penal sum of \$5,000, conditioned for the faithful performance of the duties of the following principals:

Elizabeth Conway; Meredith E. Pavey and Charles A. Bracher. The name of the Southern Surety Company of New York appears as surety upon each of said bonds.

It, of course, is assumed that you required said bonds to be given in the amounts indicated, in pursuance of Section 677 of the General Code.

Finding said bonds to have been executed in proper legal form, I have approved them as to form and return them herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.