

While the earnings of the waterworks are paid into a separate fund, they go into the city treasury and become the property of the village. Such money is no more under the control of the board of public affairs until it has been appropriated for its use than are any other unappropriated funds of the village. Until such money is appropriated for the use of the board, the board would have no authority to approve vouchers for any portion of said fund. The surplus of this fund after the payment of the operating expenses of the waterworks is expressly authorized to be used for the purpose of paying the debt charges of such waterworks. How much of this surplus is to be used for that purpose and how much for repairs and improvement is left to the discretion of the legislative authority and not of the board of public affairs, and when the legislative authority appropriates a certain amount of such surplus for debt charges the board of public affairs has no control over it and it becomes the duty of the village clerk, without any action of the board of public affairs, to transfer it to the sinking fund or bond retirement fund to be used for the payment of such debt charges by the sinking fund trustees, if there is a sinking fund, or to the treasurer if there is no sinking fund.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4074.

BOARD OF ELECTIONS—MAY EMPLOY GUARDS TO PROTECT BALLOTS
 UNTIL RECOUNTED WHEN—COST HOW PAID.

SYLLABUS:

1. *Where there is a recount of votes cast at an election in pursuance of section 4785-162, General Code, the board of elections may, if it deems it advisable, employ guards necessary to protect the ballots until said ballots are recounted when it finds there is no other method of adequate protection, and pay the cost thereof from the county treasury out of its appropriation. If the recount is of votes cast at an election in an odd numbered year, such cost should then be charged to the subdivision for which the election is held.*

2. *The cost of such guards is properly a part of the cost of such recount and should be taken out of the deposit made by the person demanding the recount, except where the deposit is refunded.*

COLUMBUS, OHIO, MARCH 20, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Sections 4785-162 et seq. of the General Code, relate to a recount of votes cast at an election, and provide for certain deposits to be made by the person requesting such recount.

QUESTION 1: In the recount procedure before a board of elections, may the board employ guards to guard the ballots in the office of the board, and compensate such guards out of the county treasury, under Section 4785-20 of the General Code?

QUESTION 2: In the event such guards are employed upon request of the person making application for the recount, may such expense be charged against the person making such application as a part of the expense of recount, and such person be required to pay the same?"

Section 4785-162, General Code, reads as follows:

"Any candidate voted for at a primary or other election, or any group of five or more qualified electors voting at such election, by making an application in writing to the board of elections, shall be entitled to have the votes for any such candidate, or other candidates for the same office, or any such issue, recounted in any or all precincts, upon the following terms and conditions. Such application must be made not later than the fifth day after the certificate of the official count has been made, and by depositing with the application ten (\$10.00) dollars per precinct, or a bond to be approved by the board, to pay the actual cost of such recount, but in no case less than five (\$5.00) dollars, and not to exceed ten (\$10.00) dollars per precinct, for each precinct in which the recount is desired. If the petitioner or petitioners succeed in establishing error sufficient to change the results in any precinct by at least two per cent (2%) of the total vote cast for such office in such precinct, or by two per cent (2%) of the total vote cast for and against such issue in such precinct, then the deposit for such precinct shall be refunded, otherwise, the actual cost of such recount shall be paid into the general fund of the county in which such recount is had, provided however, that the minimum charge of such recount shall not be less than five dollars (\$5.00) and the maximum more than ten dollars (\$10.00) per precinct. If sufficient error is established to change the result of the election, regardless of the error found in any precinct, then the deposit made for all precincts shall be refunded."

Section 4785-13, General Code, gives the board the right to appoint a clerk, assistant clerks, and employes, and section 4785-15, General Code, provides that "the board may also employ additional assistants or employes when necessary for part time only at the prevailing rate of pay for such services."

Members of the board of elections must, under section 4785-12, General Code, give oath that they will protect and preserve the records and property pertaining to elections, and I am of the view that the sections referred to above are broad enough to authorize the board to employ the necessary guards to protect ballots until said ballots are recounted if it finds there is no other method of adequate protection.

Section 4785-20, General Code, provides, among other things, that:

" * * *

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 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 rent-

ing, 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. * * *

Under this section the compensation of such guards would be payable from the county treasury, except in the case of elections in the odd numbered years.

I am of the opinion therefore that:

1. Where there is a recount of votes cast at an election in pursuance of section 4785-162, General Code, the board of elections may, if it deems it advisable, employ guards necessary to protect the ballots until said ballots are recounted when it finds there is no other method of adequate protection, and pay the cost thereof from the county treasury out of its appropriation. If the recount is of votes cast at an election in an odd numbered year, such cost should then be charged to the subdivision for which the election is held.

2. The cost of such guards is properly a part of the cost of such recount and should be taken out of the deposit made by the person demanding the recount, except where the deposit is refunded.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4075.

MARRIAGE—MOTHER'S PENSION MAY BE AWARDED TO MOTHER OF CHILDREN BORN IN COMMON LAW MARRIAGE WHEN.

SYLLABUS:

The mother of children born in a common law marriage relationship is eligible to receive a mother's pension if all other requirements of law are met.

COLUMBUS, OHIO, MARCH 20, 1935.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

"In response to a letter from the Juvenile Court of this County, I respectfully request an opinion from you concerning the right to a mother's pension under the facts enclosed herewith which are self-explanatory."

The attached memorandum states:

"A. and B. were husband and wife, being legally married, and lived together as such until about April 1925. From April 1925 to October 14, 1933, A., the husband of B., lived and cohabited with C. as husband and wife, A, dying on October 14, 1933. June 30, 1926 B, the wife of A, applied for and secured a divorce from A, naming C as co-respondent.