

2056.

ELECTIONS—COMPENSATION OF ASSISTANTS TO DIRECTOR OF  
COUNT—PAID BY CITY.

## SYLLABUS:

*The compensation of the assistants to the director of the count, employed by the Board of State Supervisors and Inspectors of Election of Hamilton County for the sole purpose of counting the ballots cast at the election for members of the council of the City of Cincinnati, should be charged against and paid solely by such city.*

COLUMBUS, OHIO, May 4, 1928.

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

GENTLEMEN:—I acknowledge receipt of your letter of recent date reading as follows:

“Sections 8 and 9 of Article 9 of the charter of the city of Cincinnati read:

‘Sec. 8. Previous to every election of the Council, the election authorities shall designate a central counting place where the ballots may be brought together and counted publicly, appoint a competent person to act as director of the count, employ a sufficient staff of assistants, and make suitable arrangements for the counting of the ballots subject only to the provisions of this charter.’

‘Sec. 9. As soon as the polls have closed, the election officials at each polling place shall seal the ballot box used for ballots for the council without opening it, and shall send it at once, as the election authorities may direct, to the central counting place with a record of the number of ballots for the council which they have given out to be voted. At the central counting place the ballot boxes shall be opened and the numbers of ballots found therein recorded and compared with the records sent from the voting places. Any discrepancies discovered shall be recorded and dealt with according to the principles laid down by the general election laws of the state so far as such principles may be applicable.’

Section 4877, G. C., reads:

‘When necessary the board may employ a deputy clerk; also one or more assistant clerks at a salary of not to exceed the rate of one hundred dollars and in all counties having cities where registration is required, not exceeding one hundred and fifty dollars per month each, except that in counties containing cities which at the last preceding federal census had or at any subsequent federal census may have a population of three hundred and fifty thousand or more, the board may compensate not to exceed six of the assistant clerks at the rate of two hundred dollars each month, and prescribe their duties. The period for which they are so employed must always be fixed in the order authorizing their employment, but they may be discharged sooner at the pleasure of the board. Such deputy clerk and assistants shall take the same oath for the faithful performance of their duties as required of the clerk of the board. The compensation of the deputy clerk and assistant clerks shall be equally divided between the city and the county.’

QUESTION: Is the compensation of assistant clerks employed by the Board of Deputy State Supervisors and Inspectors of Elections of Hamilton County, Ohio, for the sole purpose of counting ballots cast at the election of members of the city council, to be paid entirely by such city or be apportioned as provided in Section 4877, G. C.?

Correspondence in relation to the matter is enclosed herewith."

The correspondence enclosed with your letter consists of a letter from the clerk of the Board of Deputy State Supervisors and Inspectors of Elections of Hamilton County to Mr. Moses Blau, one of your examiners, dated April 5, 1928; a letter from Mr. Blau to your Bureau, also dated April 5, 1928; and a letter from the clerk of the above named board to the Auditor of State, as head of your Bureau, bearing the same date as the other two letters. The two communications last above mentioned respectively read in part as follows:

"At the request of the Hamilton County Board of Elections, we are again taking up the distribution of cost of extra assistant clerks at the councilmanic count of regular election of November, 1927.

In the first place, allow me to inform you that City Solicitor Ellis verbally stated he could see nothing in charter provisions contrary to regular distribution as set forth in Section 4877, G. C.

\* \* \* \* \*

However, I am referring following communication from board to writer:

Cincinnati, April 5, 1928.

Mr. Moses Blau, State Examiner,  
City Hall,  
Cincinnati, Ohio.

Dear Sir:—

I am directed by The Board of Deputy State Supervisors and Inspectors of Elections to respectfully acknowledge receipt of your communication of the 29th ult., relative to the distribution of compensation paid to assistants hired by this Board for the purpose of tabulating the vote for members of council of the city of Cincinnati, and to respectfully advise you that the board is not in accord with the opinion rendered by the Bureau of Inspection and Supervision of Public Offices. They further request that you go into the matter more fully with the State Department.

This board contends that the charter of the city of Cincinnati provides for the appointment of assistants to count the ballots under the Proportional Representation System, and that the assistants referred to in your opinion were hired to count the council ballots under the provisions of Section No. 19 of the city charter, and not under Section 4877, General Code. (Art. IX, Section 18.)

\* \* \*

I am further directed to advise you that other assistants were employed by the board at the same time to count ballots of the city of Cincinnati for members of the board of education, judges of the Municipal Court, municipal bond issues, etc., but that these clerks were hired under Section No. 4877, and that compensation paid them was divided against the cities and the county

accordingly—that separate motions in each case were made in the minutes of the board, and separate pay rolls kept.

\* \* \*

Kindly advise further.”

The letter to the Auditor of State reads :

“I am directed by the Board of Deputy State Supervisors and Inspectors of Elections of Hamilton County to respectfully transmit to you copy of communication this day written to Mr. Moses Blau, State Examiner, which is self-explanatory. We wish to call your attention to the following excerpts of the minutes of this board :

‘Mr. L., seconded by Mr. A., moved that one hundred and fifty-six special assistant clerks be appointed to count the first choice councilmanic ballots and that ninety special assistant clerks be retained until the entire councilmanic count has been completed, at a salary of \$5.00 per day and that they be requested to attend two lessons in a school of instruction and that they each be allowed \$2.50 a lesson.

Mr. H. moved, seconded by Mr. B. that the following accountants be appointed for the councilmanic count at a salary of \$15.00 per day by the following vote: ayes: Messrs. A., H., L., and Chief Deputy B. \* \* \* (Minutes dated October 25, 1927.)

Mr. L., seconded by Mr. B., moved that the following Democratic extra assistant clerks be appointed to be callers and checkers of the official count of the returns other than those of the councilman count, by the following vote: ayes: Messrs. A., H., L., and Chief Deputy B. \* \* \* Mr. H., seconded by Mr. A., moved that the following Republican extra assistant clerks be appointed to be callers and checkers of the official count of the returns other than those of the councilmanic count, by the following vote: ayes: Messrs. A., H., L., and Chief Deputy B. \* \* \* Mr. B., seconded by Mr. A., moved that the following extra assistant clerks be appointed to tabulate the official count of the returns other than those of the councilmanic count, by the following vote: ayes: Messrs. A., H., L., and Chief Deputy B. \* \* \* Mr. L. moved, seconded by Mr. B., that the following extra assistant clerks be appointed to count the first choice councilmanic ballots at a salary of five dollars per day \* \* \* and that forty-five of these (those beside whose name appears an asterisk) be retained until the completion of the count, by the following vote: ayes: Messrs. A., H., L., and Chief Deputy B.

Mr. H. seconded by Mr. A. moved that the following extra assistant clerks be appointed to count the first choice councilmanic ballots at a salary of five dollars per day. \* \* \* and that forty-five of these (those beside whose name appears an asterisk) be retained until the completion of the count, by the following vote: ayes: A., H., L., and Chief Deputy B. (Minutes dated November 8, 1927.)

Mr. L., seconded by Mr. A., moved that the following additional special assistant clerks be appointed to work on the councilmanic count at a salary of five dollars per day, by the following vote: ayes: Messrs. A., H., L., and Chief Deputy B. \* \* \* (Minutes of Nov. 15, 1927.)

Payroll of the extra assistant clerks account of the official count of the returns other than those of the councilmanic count was approved and ordered paid as follows, the vote being: ayes: Messrs. A., H., L., and Chief Deputy B. \* \* \* (Minutes of Nov. 18, 1927.)

Payroll of the extra assistant clerks account of the councilmanic election count was approved and ordered paid as follows, the vote being: ayes: Messrs. A., H., L., and Chief Deputy B. \* \* \* (Minutes of Nov. 18, 1927.)

You will note that the minutes of this board state specifically the purpose for which these assistants were appointed without however, specifically enumerating the statutes under which the appointments were made.

While it is true that we call these people 'assistant clerks' in our minutes instead of 'assistants' as provided for in Article 9, Section 8, in the charter of the city of Cincinnati, there is no question about our intention. (Article 9, Section 8 follows).

'Previous to every election of the Council the election authorities shall designate a central counting place where the ballots may be brought together and counted publicly, appoint a competent person to act as director of the count, employ a sufficient staff of assistants, and make suitable arrangements for the counting of the ballots subject only to the provisions of this charter.'

We understand that Mr. Blau contends that if our minutes read 'Assistants' instead of 'Assistant Clerks' this charge could stand as a direct city of Cincinnati charge.

The payroll of the assistant clerks appointed to work on the count other than the councilmanic referred to in the minutes of Nov. 8 was apportioned between the cities and the county, and there is no question now about this distribution.

We wish to call your attention to the fact that the compensation of the four (4) accountants who were appointed for the councilmanic count at the same time and under the same authority as the assistants referred to was charged against the City of Cincinnati. This charge is permitted to stand against the city, and Mr. Blau does not contend that it should be apportioned against the county and cities as has the \$2500.00 item of rental and other necessary expenditures authorized under Article 9, Section 8 of the Charter of the City of Cincinnati, and charged by us to the City of Cincinnati."

Sections 5052 and 5053, General Code, provide as follows:

Sec. 5052. "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."

Sec. 5053. "*In November elections held in odd numbered years, such compensation and expenses shall be a charge against the township, city, village or political division in which such election was held, and the amount so paid by the county shall be retained by the county auditor from funds due such township, city, village or political division, at the time of making the semi-annual distribution of taxes.* The amount of such expenses shall be ascertained and apportioned by the deputy state supervisors to the several political divisions and certified to the county auditor, in municipalities situated in two or more counties, the proportion of expense charged to each of such counties shall be ascertained and apportioned by the clerk or auditor of the municipality and certified by him to the several county auditors." (Italics the writer's.)

Section 4877, General Code, as well as Sections 8 and 9 of Article 9 of the Charter of the City of Cincinnati are quoted in your letter, and it is unnecessary again herein to set forth these sections.

The question presented is whether or not persons employed for the sole purpose of counting ballots cast at the election for members of the city council of the City of Cincinnati are to be paid entirely by such city or to be apportioned as provided in Section 4877, that is, "equally divided between the city and county."

Section 4877 was last amended on April 18, 1913 (103 v. 544), the amendment consisting of the addition of the last sentence reading, "The compensation of the deputy clerk and the assistant clerks shall be equally divided between the city and county."

The duties of the clerk of the election board, as it is commonly called, are set forth in Section 4876, General Code, which provides as follows:

"Subject to the control of the board, the clerk shall keep a full and true record of the proceedings of the board, file and preserve in its office all orders, rules and regulations pertaining to the administration of registration and elections, prepare and furnish, under the orders of the board, the registers, lists, books, maps, forms, oaths, certificates, instructions and blanks for the use and guidance of registrars, judges and clerks of elections and the board of canvassers; provide for timely furnishing of such offices therewith, and with the necessary supplies provided for them; to receive and keep close custody of the registers and copies returned to such office, as herein provided, of records, papers and certificates of every kind, relating to the office of administration of the board. He shall have the care of the ballot boxes while deposited at the office of the board, and perform such other or further duties pertaining to such office and affairs as are prescribed by the board."

This section was originally enacted in the same act in which Section 4877, General Code, was enacted, and it would seem clear, from the terms of Section 4876, supra, that the Legislature did not intend the provisions of Section 4877, with reference to dividing the compensation of the deputy clerk and assistant clerks of the election board between the city and county, to apply to such additional clerical force as might be necessary to count the ballots cast in a municipal election, when such additional clerical force was made necessary by the adoption, by the municipality, of a system of preferential voting requiring skilled counters in greater numbers than is ordinarily necessary. That is to say, as will be seen from the provisions of Section 4876, above quoted, the duties ordinarily performed by the clerk of the election board and his deputy and assistant clerks, do not include, and differ materially from, the duties for which the extra assistants referred to in your communication, were employed.

By the adoption of the system of voting now in vogue in Cincinnati, the people of that city have made necessary the employment of accountants and a large number of counters to determine the result of the elections for councilmen. The expenses incurred in employing these accountants and assistants seems to me quite clearly to be one of the necessary expenses referred to in Section 5052, General Code, which under the provisions of Section 5053, General Code, is "a charge against the \* \* \* city, \* \* \* in which such election was held."

Indeed, this seems to have been recognized when the charter of the City of Cincinnati was adopted; Section 8 quoted in your communication providing that the election authorities shall "appoint a competent person to act as director of the count, employ a sufficient staff of assistants, and make suitable arrangements for the counting of the ballots, subject only to the provisions of" the charter.

In this connection it might be pointed out that ordinarily the ballots cast at an election for councilmen are counted by the judges and clerks in the various precinct election booths. It is clear from the sections of the General Code above quoted that the compensation paid these judges and clerks in the various voting precincts should be charged against the municipality or other proper subdivision. The assistants referred to in your communication, due to the method of voting in Cincinnati, perform the work ordinarily performed by the precinct judges and clerks, and it would seem to follow that their compensation, therefore, should be a charge against the city just as the compensation of the precinct judges and clerks is a charge against the city.

In the communication to the Auditor of State, above quoted, the election board states as follows:

"We understand that Mr. Blau contends that if our minutes read 'assistants' instead of 'assistant clerks' this charge could stand as a direct City of Cincinnati charge."

There is of course no magic in the name by which the election board designated the employes necessary to count the ballots cast in the election for councilmen. What the status of these employes was is to be determined by the law under which they were hired and the nature and character of the services performed by them rather than the designation which the election board used in its minutes when authorizing the employment.

For the above reasons, in specific answer to your question it is my opinion that the compensation of the assistants to the director of the count, employed by the Board of State Supervisors and Inspectors of Election of Hamilton County for the sole purpose of counting the ballots cast at the election for members of the council of the City of Cincinnati, should be charged against and paid solely by such city.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

---

2057.

COUNCIL OF MUNICIPALITY—AUTHORITY TO ENTER INTO AN  
AGREEMENT WITH HOSPITAL ASSOCIATION TO PURCHASE HOS-  
PITAL SITE—HOW MONEY IS TO BE OBTAINED.

*SYLLABUS:*

*By virtue of the provisions of Sections 4021, 4022 and 4022-1 of the General Code, the council of a municipality may enter into an agreement with a hospital association organized not for profit, wherein the municipality agrees to furnish the sum of \$10,000 for the purpose of purchasing a hospital site and to provide a one mill levy for a period of not less than five years for the maintenance of the hospital, if, in return therefor, the association agrees to furnish permanent free hospital service to such inhabitants of the municipality as in the opinion of the majority of the trustees of such hospital are unable to pay. The execution of such a contract must, by virtue of the provisions*