

Finally, it appears that the Governor has approved all the acts of the Commission, in accordance with Section 1 of House Bill No. 17 of the 88th General Assembly.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4023.

BOARD OF ELECTIONS—COUNTY COMMISSIONERS MAY NOT
ARBITRARILY CHANGE AMOUNTS SUBMITTED IN BUDGET
OF SUCH BOARD.

SYLLABUS:

County commissioners do not have authority to arbitrarily change the amounts requested and submitted in the budget of the board of elections for the necessary and proper expenses of the board, and substitute their own arbitrary figures in lieu of the amounts requested.

COLUMBUS, OHIO, February 2, 1932.

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

DEAR SIR:—Your letter of recent date is as follows:

"I wish to call your attention to the following statement which in substance was submitted to me by one of the boards of elections of our state.

'In May, 1930, a board of elections submitted their budget to the county commissioners, setting forth an estimate of their 1931 requirements, and classified in accordance with their financial needs along various lines. Among other items, they set forth an estimate of \$5,000 for mileage and per diem of election precinct judges and clerks, and the sum of \$3,000 for office supplies. Their total budget amounted to \$12,000.

They were allowed the \$12,000 as per certification by the county auditor last January, but in dividing the appropriation, the county commissioners allocated \$6,000 to the board for compensation, mileage, etc., of precinct judges and clerks, and \$2,000 for office supplies.

You will note that the \$6,000 authorized for the payment to the precinct officials was \$1,000 more than the amount set forth in the estimate presented by the board of elections, and the \$2,000 allocated by the county commissioners for office supplies, was \$1,000 less than the amount requested and as set forth in the estimate submitted by the board.

Other items were also arbitrarily dealt with, but we present the ones mentioned as outstanding.

In the course of time certain funds were exhausted and the county commissioners were asked to transfer funds from the surplus in the fund allocated to precinct judges and clerks, and place same in part to the credit of the fund for office supplies.

The county commissioners have refused to make the transfer requested and the board has appealed to the prosecuting attorney, directing him to bring suit in the court of common pleas to compel the said county commissioners and the county auditor to make the transfer as requested.'

The following questions arise, upon which we respectfully request your legal opinion:

First. Have the county commissioners the authority or right to arbitrarily change the amounts requested and submitted in the budget of the board of elections for various purposes and substitute their own arbitrary figures?

Second. If the county commissioners have the authority lodged within themselves, or in conjunction with the county auditor, is it their duty, upon request of the board of elections, to transfer money from a fund provided for a certain purpose wherein there may be a surplus to a fund provided for a different purpose?

Third. If the county commissioners have such authority or acting in conjunction with the county auditor, refuse to make such transfer of funds when requested to do so by the board of elections, has the board the right to institute action in the court of common pleas in order to secure the necessary relief?"

Under Section 4785-13, General Code, the power and duty of preparing a budget containing the estimated cost of elections for each year rests in the first instance with the board of elections. This section reads in so far as pertinent:

"The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this act, and shall perform all the duties imposed by law which shall include the following:

* * * * *

o. To prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year.

* * * * *

This budget as prepared by the county board of elections and submitted to the taxing authority, the board of county commissioners, must be included in the annual county tax budget which is prepared under authority of Section 5625-20, General Code, as follows:

"On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board or commission, and each district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority thereof, or in the case of a municipality with its chief executive officer, before the first of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision, or by the bureau. *The taxing authority shall include in its budget of expenditures the full amounts requested therefrom by district authorities, not to exceed the amount authorized by the law applicable thereto, if such law gives such authorities the right to fix the amount of*

revenue they are to receive from the subdivision. In a city in which a special levy for a municipal university has been authorized to be levied outside of the fifteen mill limitation, or is required by the character of the municipality, the taxing authority shall include an amount not less than the estimated yield of such levy, if such amount be requested by the board of directors of the municipal university." (Italics the writer's.)

The italicised portion of the foregoing section is clearly mandatory. The courts have universally construed the word "shall" as being mandatory unless otherwise required by the context. A board of elections is a district authority as the term is defined in paragraph (j) of Section 5625-1, General Code, being part of the same act containing Section 5625-20, supra. This definition is as follows:

"(j) 'District authority' shall mean each board of directors, trustees, commissioners or other officers controlling a district institution or activity which derives its income or funds from two or more subdivisions, such as the county school board, trustees of district tuberculosis hospitals and district children's homes, district board of health and other boards."

A board of elections derives its income from more than one subdivision. Section 4785-20, infra. Although a "district" is an area which usually takes in more than one county, such as a judicial district, a congressional district, or the average conservancy district, it is not necessarily so. A district board of health usually takes in but one county. Sections 1261-17 and 1261-18, General Code.

It remains to be determined whether or not the law gives to boards of elections the right to fix the amount of revenue that they are to receive from the county. This right is contained in Section 4785-20, General Code, which section provides in so far as pertinent as follows:

"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. * * * * At the time of submitting budget estimates in each year the board shall submit to the taxing authority of each subdivision an estimated 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 employes 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.

* * * * *

Here again the legislature has used the word "shall" in expressly giving to the boards of elections the right to fix the amount of revenue they are to receive from the subdivision. This right is only limited as to the amount being sufficient to provide for the necessary and proper expenses of the board. The authority to appeal to the Court of Common Pleas in the event of a failure on the part of the commissioners to appropriate funds to take care of expenses of the board, should be invoked only when there is a controversy as to whether or not the funds sought to be appropriated are, in fact, for necessary and proper expenses. In the absence of any controversy with respect to whether or not the funds are for necessary and proper expenses, there is no necessity for an appeal to the court of common pleas because the duty on the part of the commissioners to appropriate is mandatory.

These items of necessary expense of boards of elections are payable out of the general fund of the county and the county commissioners shall include in the general levy the amount certified by the board of elections to be necessary for such purposes. Section 5625-5, General Code, relating to the general levy for current expenses, provides inter alia: "Such general levy shall include * * * the amounts necessary for general, special and primary elections."

It is accordingly my opinion that the county commissioners do not have authority to arbitrarily change the amounts requested and submitted in the budget of the board of elections for the necessary and proper expenses of the board and substitute their own arbitrary figures in lieu of the amounts requested.

Since your second and third questions are predicated upon an affirmative answer to your first question, they need not be answered herein.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4024.

FOREIGN CORPORATION—TITLE GUARANTY COMPANY—NOT
ADMITTED IN OHIO TO GUARANTEE REAL ESTATE TITLES.
SYLLABUS:

A foreign corporation can not legally qualify under the laws of this state for the purpose of engaging in the business of guaranteeing title to real property. (Opinions of the Attorney General for 1928, page 2885 approved and followed.)

COLUMBUS, OHIO, February 2, 1932.

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

DEAR SIR:—We are in receipt of your communication, which reads as follows:

"Under date of December 21, 1928, your predecessor in office, the Hon. Edward C. Turner, then Attorney General, advised the Secretary of State to the effect that a foreign corporation can not be admitted to