

3751.

DEPUTY STATE SUPERVISORS OF ELECTIONS—ADDING MACHINE—
CLAIM FOR PURCHASE BY SAID BOARD IN COUNTY NOT CON-
TAINING REGISTRATION CITY MUST BE APPROVED BY COUNTY
COMMISSIONERS—COMMISSIONERS ARE SOLE JUDGES OF
WHETHER SAME PROPER EXPENSE.

1. *A claim for an adding machine purchased by the board of deputy state supervisors of elections of a county not containing a registration city cannot legally be paid until approved by the county commissioners.*

2. *Whether or not such a purchase is a proper expense is a question of fact to be determined in the first instance by the county commissioners. Said commissioners are the sole judges of what is a proper expense, unless such judgment should constitute a clear abuse of discretion.*

COLUMBUS, OHIO, November 25, 1922.

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

GENTLEMEN:—In your recent communication you request my opinion as follows:

“The board of deputy state supervisors of elections of a county not containing a registration city purchased an adding machine for its use. The bill for the same is approved by said board and presented to the county commissioners to be allowed.

Question: May the county commissioners be compelled to pay this bill?

We are enclosing herewith the letter of Mr. Williams for your information.”

In considering your inquiry it is necessary to examine the provisions of section 4821 G. C., which it is believed furnishes the authority for the purchasing of necessary supplies of the election officers. Said section provides as follows:

“All proper and necessary expenses of the board of deputy state supervisors shall be paid from the county treasury as other county expenses, and the county commissioners shall make the necessary levy to provide therefor. In counties containing annual general registration cities, such expenses shall include expenses duly authorized and incurred in the investigation and prosecution of offenses against laws relating to the registration of electors, the right of suffrage and the conduct of elections.”

In examining the provisions of said section, it is clear that “all proper and necessary expenses” should be paid from the county treasury as “other county expenses.”

It is believed unnecessary to consider whether or not an adding machine is a proper expense for a board of deputy state supervisors of elections of a county not containing a registration city to determine your question. What is and what is not a necessary expense is a question of fact to be determined in the first instance by

those authorized to make such a purchase. Inasmuch as section 4821 above quoted provided that such expenses shall be paid as other county expenses are paid, it is essential to consider how such other expenses are paid.

Section 2460 G. C. which is in *para materia* with the section above quoted, provides as follows:

"No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."

It is clear from this provision that no claims may be properly paid by the county auditor unless they are first allowed by the county commissioners, excepting those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal.

In considering the provisions of law relative to the furnishing of supplies for election boards, it would seem that no provision has been made authorizing the board of elections to fix such amounts. In the case of *State vs. Ratterman*, 3 C. C. 626, it was held:

"If the amount of the claim is not fixed by law such as a claim for ballot boxes, such claim cannot be paid on a warrant issued by the auditor without the sanction of the commissioners."

In view of the foregoing, it is apparent that such a claim as that to which you refer cannot legally be paid by the county unless approved by the county commissioners. It is a well settled rule of law that where discretion is given to a board, mandamus will not lie unless there has been a clear abuse of such discretion. Whether or not an adding machine is a necessary expense is a question that must be determined in the first instance by the county commissioners.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3752.

COUNTY BOARD OF EDUCATION—TIME DIRECTORY AS TO RESOLUTION FOR TEACHERS' INSTITUTE—WHEN EXPENSES LEGAL.

The provision appearing in section 7868 G. C., that the county board of education shall decide by formal resolution, prior to February 1st, whether a county institute shall be held in the county during the current year, is directory only and if such resolution was passed after the first of February by the county board of