

Likewise, it seems clear that if a person entitled, for the reasons stated, to a vacation with pay elects to accept in lieu thereof, a lump sum payment, in accordance with the terms of his contract, the amount of such lump sum payment is in my opinion a current expense as of the time when the election is made.

Under the rule here under construction as adopted by the trustees of the university, a right arises at the time the service was rendered in favor of the person rendering the service with a view to its being credited to a vacation with pay sometime in the future, or payment in lieu thereof, and a corresponding liability is created on the university at that time, but it is not a present liability to pay but a liability to grant a vacation, or make payment in lieu thereof, sometime in the future, when the person rendering the service elects which of the alternatives he will accept. The liability which thus arises at the time the service is rendered is not a liability to pay. The liability to pay does not arise until the election is made, and is then, in my opinion, a current expense as of that time, which may be paid from the then current appropriation.

Claims for pay for "Personal Service" during a vacation period, earned by the rendering of service at some time in the past, or claims for lump sum payments in lieu thereof, being a current expense as of the time when the vacation is taken, or the election made to accept lump sum payments in lieu thereof, are not "debts", as the term is used in Sections 1, 2 and 3 of Article VIII of the Constitution of Ohio. *State ex rel Ross vs. Donahey*, 93 O. S., 414-419.

As an abstract proposition of law, I am of the opinion that payments may not be made for services rendered to the Ohio State University during the years of 1925 or 1928, from appropriations made to said university for "Personal Service" in the general appropriation act (House Bill No. 510) of the 88th General Assembly. In view, however, of the facts stated in your letter, upon which your inquiry is based, I am of the opinion that payment may lawfully be made of the claims in question from the appropriation of "Student Fees" made to "Personal Service" for the Ohio State University by the 88th General Assembly, in the act referred to above.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2219.

ELECTION LAW—COMBINING PRECINCTS CONTAINING LESS THAN
250 VOTERS—BOARD HAS DISCRETIONARY POWER.

SYLLABUS:

Under the provisions of Section 4785-24, General Code, when notice of a combination of precincts containing less than two hundred fifty voters has been given, remonstrances made against such combination and a public hearing held as therein provided, the board of elections has discretionary power to determine whether or not such combination shall be made.

COLUMBUS, OHIO, August 9, 1930.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

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

"The board of elections of my county has recently put the following question to me for determination. The question in brief that the board of elec-

tions has asked me is whether or not the board of elections is compelled by Sections 4785-22 and 4785-23 of the General Code of Ohio to combine precincts in which there are less than 250 electors, as the same are to be calculated under the law, regardless of the inconvenience that said combination might cause the voters of affected precincts?

This question came to a head at a hearing conducted by the board of elections at which time the combination of certain precincts in the county was up for determination. A large delegation of voters from said precincts involved attended the meeting in question and voiced their protest to the combination of certain election precincts. The board of elections is of the opinion that the combination of certain precincts will work a great hardship upon the electors over certain precincts proposed to be combined. This is due because of the condition of the roads, or the lack of roads, or the distance electors will be qualified to travel in order to cast their ballot.

The immediate question that came up is summarized in the above question put to you. For example, it was proposed to combine a certain corporation precinct of less than one hundred electors to a township precinct and have the combined precincts vote at the voting place of the township precinct. Inasmuch as the corporation in question has less than one hundred electors there is legal grounds, under Section 4785-23, for the combination of said corporation precinct with an outlying township precinct. The outlying township precinct involved, as it now stands, does not contain, by the method of calculation invoked by law, 250 electors as provided for in Section 4785-22. At the present time, part of the township votes with the corporation precinct in question at one voting place and the rest of the township votes at another voting place several miles distant. That a combination of these two districts will work a great inconvenience on the electors in question admits of no dispute. Members of the board of elections feel that it would be a mistake to combine the two districts in question unless same is mandatory under the above sections of the Code. That part of the law that is causing said board of elections the most difficulty appears in about the middle of Section 4785-22 and reads as follows:

'b. But no precinct shall contain less than 250 nor more than 400 electors.'

If such provision of the law is mandatory then, despite the inconvenience that same may cause in the rural sections of the county the board of elections will be compelled to combine certain outlying districts in order to bring up the number of electors in said district to the minimum of 250."

Section 4785-22, General Code, to which you refer, provides:

"The board shall have authority, in the manner provided by law, to establish, define, divide, rearrange and combine the several election precincts within their jurisdiction as often as it is necessary to maintain the requirements as to number of voters in a precinct, and to provide for the convenience of the voters and the proper conduct of elections. Each precinct shall be compact in form and shall not contain portions of two civil divisions. Each precinct shall contain as nearly as practicable three hundred and fifty electors, based upon the total votes cast at the election held in 1928 or in the November election every fourth year thereafter, but no precinct shall contain less than two hundred and fifty nor more than four hundred electors; except that a township or a village containing a less number of voters shall compose one precinct. When four hundred or more votes have been cast, at the last preceding state or regular municipal election in a precinct, the

board may so divide and rearrange the precinct, and the precincts adjacent thereto, as to equalize the number of voters in each precinct and limit the number to three hundred fifty as nearly as may be practicable; and when the vote is less than three hundred fifty, as determined by the last preceding regular state election, the board may combine and rearrange the precincts for the same purpose."

Sections 4785-23 and 4785-24, General Code, which are also pertinent to your inquiry, provide:

Sec. 4785-23.

"Each township, exclusive of the territory embraced within the limits of a municipal corporation, shall compose an election precinct; except that a municipality wherein less than one hundred votes were cast at the next preceding general election may form a part of the township precinct. A township wherein more than four hundred votes were cast at the last preceding regular state election may be divided into election precincts, if the board is of the opinion that such division is necessary. Each municipal corporation shall constitute one election precinct unless it is divided according to law into precincts. The lands used for a state or national home for disabled soldiers shall constitute a separate election precinct, and, if necessary, may be divided and rearranged within such limits as other precincts are arranged and divided."

Sec. 4785-24.

"When the board deems it necessary to change, divide or combine any precinct, it shall, at least thirty days previous to any election, give ten days notice by posting a notice in a conspicuous place in the board's offices and in at least one conspicuous place in such precinct, stating that the question whether such precinct shall be divided, changed or combined will be considered on a day named in the notice. On such day, or some subsequent day to which the matter may be adjourned, the question of dividing, changing or combining such precinct shall be heard. If there are no remonstrances against said division, change or combination, the board of elections shall declare in favor thereof and designate the precincts so established. If twelve electors of such precinct remonstrate against such division, change or combination, the matter shall be heard at a public hearing to be called by the board and determined; and such order shall be made for or against such division, change or combination, as is deemed proper."

There are several exceptions to the provision that no precinct shall contain less than two hundred and fifty electors; a township containing less than two hundred and fifty electors shall be one precinct; a village containing less than two hundred and fifty but more than ninety-nine electors shall be one precinct; lands used for a state or national home for disabled soldiers, containing less than two hundred fifty electors shall be one precinct. You state that the village precinct in question contains less than one hundred electors, and therefore, under the provisions of Section 4785-23, supra, such village is not within the exception to the requirement of Section 4785-22 that no precinct shall contain less than two hundred and fifty electors. I assume that the precincts to be joined are in the same township.

It is obvious that the language of Section 4785-22, supra, is generally directory or permissive; that is to say, the board of elections may, if it sees fit, take such steps as may be necessary in dividing, rearranging and combining the precincts in their

county so that each precinct shall contain as nearly as possible three hundred fifty electors. This observation is, however, subject to the qualification that if there should be two adjoining precincts for instance in the county, one of which is a village precinct containing less than one hundred voters and the adjoining precinct containing less than two hundred fifty voters within the same civil division as the village precinct, it is clearly the duty of the board of elections to proceed toward combining the two. I assume that proceedings have already been taken toward consummating this purpose, since you state that a hearing has been held by the board of elections upon the question of combining the precincts in question. Section 4785-24, supra, provides for the posting of a notice of such proposed action and further provides that if twelve electors remonstrate against such action as therein set forth, a public hearing shall be called. I assume that these detailed steps have been taken and that remonstrances have been filed which resulted in the hearing having been held.

I am of the view that although the provision of Section 4785-22, supra, that no precinct shall contain less than two hundred fifty electors, may be said to place a mandatory duty on the board of elections to take such steps as may be necessary to comply therewith, after the steps outlined in Section 4785-24, supra, have been taken, the question of whether or not the combination of precincts shall be effected must depend not upon the language of Section 4785-22, but rather upon the language of Section 4785-24. It is expressly provided in this last mentioned section that upon a public hearing being held pursuant to remonstrances having been made as therein set forth, the matter shall be determined at such public hearing "and such order shall be made for or against such * * * combination as is deemed proper." To say that at a hearing upon a combination such as is here under consideration the board must under all circumstances be compelled to effectuate the change would result in the publishing of notice, filing of remonstrances and holding of the hearing being absolutely meaningless and futile. Section 4785-24 contains no exception as to a combination of precincts containing less than two hundred fifty electors. I think it is clear, therefore, that under the provisions of Section 4785-24, General Code, when notice of a combination of precincts containing less than two hundred fifty voters has been given, remonstrances made against such combination and a public hearing held as therein provided, the board of elections has discretionary power to determine whether or not such combination shall be made.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2220.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN BELMONT COUNTY, OHIO.

COLUMBUS, OHIO, August 9, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*