



JENNIFER BRUNNER
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ADVISORY 2009-14
December 21, 2009

TO: All County Boards of Elections

RE: Decision of the Court of Common Pleas of Ashland County, Ohio
Regarding Funding of Boards of Elections

This Advisory is to notify county election officials of a decision issued December 10, 2009, by the Ashland County Court of Common Pleas in the case *Board of Elections of Ashland County, Ohio v. Board of Commissioners of Ashland County, Ohio*, Case No. 09-CIV-420. The court's opinion (attached) includes findings of facts and conclusions of law. Also attached is the court's judgment entry in the case.

The decision interprets R.C. 3501.17(A), which establishes a statutory duty on the part of county commissioners to adequately fund boards of elections. As such, the court's opinion may be of interest to your county prosecutor and you may wish to provide him or her a copy of the opinion and judgment entry.

If you have any questions concerning this advisory, please contact your county's assigned elections counsel.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Brunner".

Jennifer Brunner

Attachments

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

2009 DEC 10 AM 10:34

BOARD OF ELECTIONS
OF ASHLAND COUNTY, OHIO

CLEARING HOUSE
CASE NO. 09 CIV 420
CLERK OF COURT
ASHLAND, OHIO

Plaintiff

JUDGE JUDITH A. CROSS
Sitting by Assignment

Vs.

BOARD OF COMMISSIONERS
OF ASHLAND COUNTY, OHIO

Defendant

FINDINGS OF FACT
CONCLUSIONS OF LAW

This matter came before the Court upon the complaint of Plaintiff asking this Court to require Defendant to appropriate a sum of money sufficient to allow Plaintiff to pay all outstanding bills for the year 2009. The action is brought under O.R.C. Section 3501.17(A) wherein the commissioners of each county are mandated to appropriate funds to cover the necessary and proper expenses of the Board of Elections for said county.

This action is not a mandamus action but a specific statutory procedure. The Board of Elections has an unique position in county government in that while the county is required to fund the activities of the Board, the Board itself is under the control of and answerable only to the Secretary of State. The Board of Elections has independent authority over its own budget.

This independence is granted to the Board of Elections to ensure that the right to vote, which can only be guaranteed by effective and efficient public elections is not compromised by any political concerns, as stated in *State ex rel Ruggles v Howser*, No. CA 87-11-017 (1988) Ohio App LEXIS 1678 (12th Dist. 1988) and quoted in *Stauffer v.*

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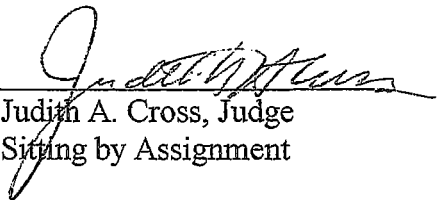
Miller, 79 Ohio App 3d 100, 606 N.E. 2d 1037 (1992). (As in *Stauffer*, this Court wants to make it clear that there is no allegation nor any evidence of any political maneuvering in the instant matter.)

The Commissioners do not have the right to approve, review or otherwise have any oversight over the Board of Elections necessary and proper expenses. The question then becomes whether the Commissioners can meet their burden of showing that the expenses are unreasonable or unnecessary, as they oppose the allocation of the funds. The definition of “necessary and proper” which has been used by courts is that given in Black’s Law Dictionary: “that which is reasonably sufficient to meet a statutory duty”. (Quoted in *Stauffer*) The Commissioners failed to show by a preponderance of the evidence that the expenses to be covered by the asked for additional appropriation are unreasonable or unnecessary to complete the statutory duty of the Board of Elections.

The Commissioners argue that the financial status of Ashland County is such that the extra appropriation asked for by the Board of Elections is too much of a hardship, and therefore even though the County is mandated to pay the necessary and proper expenses it should be excused on the grounds of hardship. It is apparent to the Court that Ashland County is, as are many counties, facing difficult financial times. However, as pointed out in *State ex rel Weaver v Lake Co. Bd. Of Comm’rs* (1991), 62 Ohio St. 3d 204, this hardship cannot by itself determine the required amount of funding. *State ex rel Weaver* dealt with funding for a court, and not a Board of elections, but the statutory requirement to fund the Board of Elections is at least equal to the requirement to adequately fund the court, so the same considerations apply.

O.R.C. 3501.17 sets out the procedure, which the Board of Elections has followed, for requesting the Common Pleas court to determine the amount of an appropriation it (the Court) considers necessary and proper. The Board of Elections request an additional appropriation of \$25,684 for the year 2009. The original appropriation for the Board of Elections for 2009 was \$347,820.96. This amount was reduced to \$319,994.00 in March of 2009, and further reduced in June, 2009 to \$302,602.00. Allowing the Board the requested \$25,684 would bring their actual appropriation for 2009 to \$328,286; which is less than the original appropriation of \$347,820.96. The Board of Elections was also required to spend 2009 monies to pay bills incurred in 2008, in the amount of \$22, 757.

The Court therefore finds the appropriation for the Board of Elections should be increased for the year 2009 in the amount of \$25,684.00 for necessary and proper expenses incurred in the performance of the statutory duties of the Board. Further, all attorney expenses incurred in this action, both for the Board of Elections and for the Board of Commissioners, shall be paid by the Board of Commissioners and shall not be charged to the Board of Elections appropriation.


Judith A. Cross, Judge
Sitting by Assignment

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IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

2009 DEC 10 AM 10:34

CLERK OF COURT
ASHLAND, OHIO

BOARD OF ELECTIONS
OF ASHLAND COUNTY, OHIO

CASE NO. 09-CIV-420

Plaintiff

JUDGE JUDITH A. CROSS
(Sitting by Assignment)

Vs.

BOARD OF COMMISSIONERS
OF ASHLAND COUNTY, OHIO

Defendant

JUDGMENT ENTRY

This matter came before the Court under O.R.C. Section 3501.17(A) with a request by the Board of Elections of Ashland County, Ohio for the Court to determine an amount for an additional appropriation of funds for the 2009 year to pay necessary and proper expenses incurred by the Board of Elections in performing its statutory duty. The Board of Commissioners of Ashland County, Ohio opposed said appropriation, claiming the expenses were not necessary and proper, and further claiming financial hardship.

The Court finds the Board of Commissioners failed to show the expenses were not necessary and proper, and further that the claim of financial hardship by itself does not justify the failure to adequately fund the Board of Elections.

Therefore, the Court ORDERS that the Board of Commissioners of Ashland County, Ohio increase the 2009 appropriation for the Board of Elections of Ashland County, Ohio by the amount of Twenty-five Thousand Six Hundred and Eighty-four Dollars (\$25,684.00). The Court further ORDERS that any and all attorney expenses

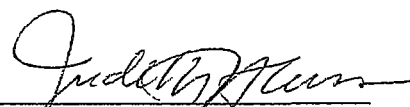
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incurred by this action, both on behalf of the Board of Elections and the Board of Commissioners, are to be paid by the Board of Commissioners and are not to be charged to the Board of Elections appropriations.

This is a final, appealable order.

AND IT IS SO ORDERED.



Judith A. Cross, Judge
Sitting by Assignment