SLIP OPINION NO. 2023-OHIO-3286

THE STATE EX REL. BOARD OF EDUCATION OF THE OTTAWA HILLS LOCAL SCHOOL DISTRICT *v.* LUCAS COUNTY BOARD OF ELECTIONS.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Ottawa Hills Local School Dist. Bd. of Edn. v. Lucas Cty. Bd. of Elections,* Slip Opinion No. 2023-Ohio-3286.]

Elections—Mandamus—R.C. 3501.02(F) and 5705.03—Compliance with election statutes—Tax levies—Board of education failed to certify to board of elections accurate resolution to proceed with tax levy "not later than four p.m. of the ninetieth day before the day of the election," R.C. 3501.02(F)—Board of elections did not abuse its discretion or act in disregard of applicable legal provisions in refusing to place levy on ballot—Writ denied.

(No. 2023-1081—Submitted September 13, 2023—Decided September 15, 2023.)

IN MANDAMUS.

Per Curiam.

{¶ 1} In this expedited election case, relator, the Board of Education of the Ottawa Hills Local School District, filed this action seeking a writ of mandamus

ordering respondent, the Lucas County Board of Elections, to place a tax levy on the November 7, 2023 general-election ballot. We deny the writ.

I. FACTUAL, PROCEDURAL, AND LEGAL BACKGROUND

{¶ 2} Ottawa Hills Local School District is a school district in Lucas County. In June 2023, it began the process to place a new operating levy on the November 2023 general-election ballot.

{¶ 3} R.C. 5705.03 establishes the process that a board of education must follow to place a tax levy on the ballot. *See also* R.C. 5705.01(A) and (C) (defining the terms "subdivision" and "taxing authority" for purposes of R.C. Chapter 5705). First, the board of education must pass a resolution determining that it is necessary to levy a tax greater than the ten-mill limit under Ohio law and requesting that the county auditor certify various amounts relating to the resolution. R.C. 5705.03(B)(1). This resolution is commonly called a "resolution of necessity." *See State ex rel. Perry Twp. Bd. of Trustees v. Husted*, 154 Ohio St.3d 174, 2018-Ohio-3830, 112 N.E.3d 889, ¶ 3. A resolution of necessity must include the "proposed rate of the tax, expressed in mills for each one dollar of taxable value, or the dollar amount of revenue to be generated by the proposed tax." R.C. 5705.03(B)(1)(a). Along with other amounts, and when applicable to the proposed levy, the county auditor then certifies back to the board of education the "levy's rate, [as described in the statute], expressed in dollars, rounded to the nearest dollar, for each one hundred thousand dollars of the county auditor's appraised value." R.C. 5705.03(B)(2)(c)(ii).

{¶ 4} If the board of education wants to proceed with placing the levy on the ballot, it must then pass a resolution "stating the rate of the tax levy, expressed in mills for each one dollar of taxable value and the rate or estimated effective rate, as applicable, in dollars for each one hundred thousand dollars of the county auditor's appraised value, as estimated by the county auditor, and that the taxing authority will proceed with the submission of the question of the tax to electors."

R.C. 5705.03(B)(3). This second resolution in the process is commonly called the "resolution to proceed." *See Perry Twp. Bd. of Trustees* at ¶ 4.

{¶ 5} Finally, the board of education must then certify both of the resolutions and a copy of the county auditor's certification to the proper county board of elections. R.C. 5705.03(B)(3). The board of education must certify the issue to the board of elections no later than 4:00 p.m. of the 90th day before the day of the election. *See* R.C. 3501.02(F).

{¶ 6} Here, on June 21, 2023, pursuant to R.C. 5705.03, the board of education passed four resolutions of necessity. Each resolution proposed a levy at a different tax rate: 10.9 mills, 11.9 mills, 12.9 mills, and 13.9 mills. Each resolution requested that the county auditor certify to the board of education the total amount of revenue that would be raised by the levy and the dollar amount of the tax for each $100,000 of a property's appraised value.

{¶ 7} The county auditor certified the estimates to the board of education. The auditor calculated that a levy of 12.9 mills would raise $2,344,000, with a taxpayer cost of $452 for each $100,000 of appraised property value, and that a levy of 10.9 mills would raise $1,981,000, with a taxpayer cost of $382 for each $100,000 of appraised property value.

{¶ 8} On July 19, the board of education passed a resolution to proceed with a levy of 12.9 mills. The resolution included the correct 12.9-mills amount and the correct auditor's calculation that the levy would raise $2,344,000. However, the resolution included the wrong estimated rate for the levy for each $100,000 of appraised property value. While the auditor had certified that the estimated rate for a 12.9-mill levy would be $452, the resolution stated that the estimated rate would be $382. The ballot language included in the resolution also stated the wrong estimated rate of $382. The board of education argues that these mistakes are akin to typographical errors, because the resolution mistakenly included the auditor's estimated rate for a 10.9 mill levy.

{¶ 9} On July 20, which was 20 days before the August 9 statutory deadline under R.C. 3501.02(F), the school district's treasurer submitted to the board of elections the resolution of necessity, the auditor's certification, and the resolution to proceed. On August 14, the board of elections emailed the school district's treasurer, informing him that the resolution to proceed contained an incorrect estimated cost per $100,000 of appraised property value.

{¶ 10} On August 16, the board of education passed a new resolution, which it calls the "Confirming Resolution." That resolution states, "The Board confirms that the Estimated Cost is $452." It also includes ballot language stating the correct estimated cost of $452. The board of education sent the confirming resolution to the board of elections that day. At its August 23 meeting, the board of elections voted to deny certification of the levy to the November 2023 general-election ballot.

{¶ 11} On August 28, the board of education filed this original action seeking a writ of mandamus ordering the board of elections to certify the levy question and place it on the November 7, 2023 general-election ballot.

II. ANALYSIS

A. Legal standards

{¶ 12} To obtain a writ of mandamus, the board of education must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the board of elections to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *See State ex rel. Clark v. Twinsburg*, 169 Ohio St.3d 380, 2022-Ohio-3089, 205 N.E3d 454, ¶ 16. The board of education lacks an adequate remedy in the ordinary course of the law due to the proximity of the November 7, 2023 election. *See id.*

{¶ 13} Mandamus is an appropriate remedy to compel a board of elections to place a tax levy on the ballot. *See State ex rel. Orange Twp. Bd. of Trustees v. Delaware Cty. Bd. of Elections*, 135 Ohio St.3d 162, 2013-Ohio-36, 985 N.E.2d 441, ¶ 1. "In a mandamus action challenging the decision of a county board of

elections, the standard is whether the board 'engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.' " *State ex rel. Mann v. Delaware Cty. Bd. of Elections*, 143 Ohio St.3d 45, 2015-Ohio-718, 34 N.E.3d 94, ¶ 13, quoting *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11. "An abuse of discretion implies an unreasonable, arbitrary, or unconscionable attitude." *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections*, 80 Ohio St.3d 302, 305, 686 N.E.2d 238 (1997). Here, the board of education does not argue that the board of elections engaged in fraud or corruption.

B. The board of elections properly refused to place the levy on the ballot

{¶ 14} As a general matter, if a taxing authority such as a board of education does not timely certify a resolution to proceed with a levy to the board of elections pursuant to R.C. 5705.03(B)(3), the board of elections may not place the levy on the ballot. *See State ex rel. Cornerstone Developers, Ltd. v. Greene Cty. Bd. of Elections*, 145 Ohio St.3d 290, 2016-Ohio-313, 49 N.E.3d 273, ¶ 1, 10-11, 17 (based on a former version of R.C. 5705.03, this court granted a writ of mandamus ordering a board of elections to *remove* a levy from the ballot when the resolution to proceed was adopted and certified three weeks after the deadline).

{¶ 15} Here, the board of education first argues that it timely certified the resolution to proceed to the board of elections and thus strictly complied with the statutory requirements. Alternatively, it argues that it substantially complied with the statutory requirements and that its error did not negatively affect the public interest.

1. The board of education did not strictly comply with the statutory requirements

{¶ 16} "In general, election statutes in Ohio are mandatory and require strict compliance unless the statute specifically permits substantial compliance." *Stutzman v. Madison Cty. Bd. of Elections*, 93 Ohio St.3d 511, 514, 757 N.E.2d 297 (2001). Neither R.C. 5705.03, the statute that sets the process for a taxing authority

to have a tax levy placed on the ballot, nor R.C. 3501.02(F), the statute that sets the deadline for certification of the issue to the board of elections, permits substantial compliance. Strict compliance with these statutes is thus generally required for a board of education to have a tax levy placed on the ballot. *But see Stutzman* at 514 ("[W]e have * * * at times held that courts must avoid unduly technical interpretations that impede public policy in election cases").

{¶ 17} The board of education did not comply with all the requirements of R.C. 5705.03(B)(3), which requires a resolution to proceed to include "the rate or estimated effective rate, as applicable, in dollars for each one hundred thousand dollars of the county auditor's appraised value, as estimated by the county auditor." The board of education's resolution to proceed did not contain the actual rate estimated by the county auditor for the 12.9-mills levy—it contained the rate that the county auditor estimated under a different millage amount (10.9 mills). The board of education later passed a new resolution (its "Confirming Resolution") that included the correct amount, but it did so seven days after the August 9 certification deadline. *See* R.C. 3501.02(F).

{¶ 18} The board of education argues that even though the resolution to proceed contained the wrong estimated rate for the levy for each $100,000 of appraised property value, it still strictly complied with R.C. 5705.03(B)(3) because the error was a "typo" or a "scrivener's error." But absent specific evidence to support such a conclusion, we can only determine that the drafter simply used a number from the wrong auditor's certification.

{¶ 19} The caselaw that the board of education relies on does not support the proposition that the resolution to proceed strictly complied with R.C. 5705.03(B)(3). The board of education first relies on *Stanton v. Frankel Bros. Realty Co.*, 117 Ohio St. 345, 348-349, 158 N.E. 868 (1927), in which this court interpreted a statute that erroneously included the word "of" instead of the word "or." This court held that it "will not permit a statute to be defeated on account of

a mistake or error, where the intention of the Legislature can be collected from the whole statute, or where one word has been erroneously used for another, and where the context affords means of correction." *Id.* at 350. But *Stanton* has no relevance to the question here, which is whether a resolution that is required by statute to contain an accurate monetary amount strictly complies with the statute when it inadvertently contains the wrong monetary amount.

{¶ 20} The board of education also relies on several lower-court decisions in which the courts construed errors in documents or ordinances as being inconsequential. *See Lipchak v. Chevington Woods Civic Assn., Inc.*, 5th Dist. Fairfield No. 14-CA-40, 2015-Ohio-263, ¶ 39 (due to a "scrivener's error," one word in the name of a homeowners' association was omitted from a deed); *Butler Twp. Bd. of Trustees v. Winemiller*, 2d Dist. Montgomery No. 19489, 2003-Ohio-1258, ¶ 34 (due to a "typo," ordinance required that notices be placed at addresses that did not exist); *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356, 632 N.E.2d 923 (11th Dist.1993) (newspaper misprinted time of a public meeting as 7:00 p.m. rather than 6:00 p.m.); *Paterson v. Lorain*, 9th Dist. Lorain Nos. 2440, 2441, and 2442, 1976 WL 188996, *3 (Dec. 30, 1976) ("typographical error" in ordinance regarding an assessment). None of these cases involved an election, however, and none discussed an error in the context of strict compliance with a statute. In fact, the court of appeals in *Winemiller* held that the postings at issue in that case had *substantially complied* with the ordinance. *Winemiller* at ¶ 34. And the court of appeals in *Paterson* relied in part on a statute that explicitly allowed courts to disregard technical errors made by a legislative authority in cases involving special assessments. *See Paterson* at *3; *see also* R.C. 727.32.

{¶ 21} The board of education did not strictly comply with its statutory obligations under R.C. 5705.03(B). The original resolution to proceed did not contain the actual amount certified by the auditor as the estimated tax rate for the

12.9-mill levy, and the board of education did not certify a corrected resolution to proceed to the board of elections until after the August 9 deadline.

2. The board of education's error was not a technical violation that did not affect the public interest

{¶ 22} The board of education argues that even if it did not strictly comply with the statutory requirements, this court should grant the writ because, in the board of education's view, it substantially complied with R.C. 5705.03(B)(3) and granting the writ will not undermine the statute's purpose.

{¶ 23} Although strict compliance with election statutes is generally required, this court has held that " 'courts must avoid unduly technical interpretations that impede public policy in election cases.' " *Orange Twp. Bd. of Trustees*, 135 Ohio St.3d 162, 2013-Ohio-36, 985 N.E.2d 441, at ¶ 30, quoting *Stutzman*, 93 Ohio St.3d at 514, 757 N.E.2d 297. "Thus, a technical violation that prevents an issue from reaching the ballot should have some connection to the public interest and serve a public purpose." *Id*.

{¶ 24} The board of education argues that it substantially complied with its obligations because, except for the fact that the resolution to proceed contained the wrong estimated tax rate, it provided the required documents to the board of elections before the deadline and corrected the error in the resolution seven days after the deadline. It further argues that there is still time to place the levy on the ballot and that voters still have sufficient time to review the levy.

{¶ 25} We disagree. Even if R.C. 5705.03(B)(3) permitted substantial compliance, the board of education's error was not insignificant. One purpose of a statutory certification deadline is "to [e]nsure that concerned voters have an adequate amount of time to obtain familiarity" with the issue, *State ex rel. Stern v. Quattrone*, 68 Ohio St.2d 9, 10, 426 N.E.2d 1389 (1981) (analyzing purpose of similar statutory deadline for submission of an initiative petition to a board of elections); *see also State ex rel. English v. Geauga Cty. Bd. of Elections*, 52 Ohio

St.2d 49, 50-51, 369 N.E.2d 11 (1977) (regarding statute requiring certain ballot issues to be certified to the board of elections at least 60 days prior to the election, legislature "made a policy determination * * * that certification of a question or issue 60 days prior to an election is the minimum time necessary to provide reasonable assurance that concerned voters can obtain familiarity with the question or issue so certified"). By not passing and sending to the board of elections an accurate resolution until seven days after the statutory certification deadline, the board of education denied the public its full statutory time of 90 days before the election to review the levy.

{¶ 26} Moreover, certification deadlines provide certainty in election administration. *See State ex rel. South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Elections*, 10th Dist. Franklin No. 04AP-869, 2004-Ohio-4893, ¶ 23; *see also State ex rel. Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 129, 2005-Ohio-5642, 841 N.E.2d 757, ¶ 39 (the state has an interest in conducting orderly elections with limited resources). The election statutes are interconnected and create tight timeframes during which boards of elections must perform numerous duties. Allowing a taxing authority to certify a proposed levy to a board of elections a week after the statutory deadline for doing so would create uncertainty in election administration, interfere with the timeframes for performing duties, and impose additional burdens on election officials.

{¶ 27} The caselaw that the board of education relies on does not help its argument. First it cites *Stutzman*, 93 Ohio St.3d 511, 757 N.E.2d 297, in which this court held that a board of elections had properly rejected a challenge to a referendum petition concerning an ordinance to rezone property. *Id.* at 514-515. The statute at issue in *Stutzman* required the referendum petition to contain the full and correct title of the ordinance. *Id.* But there was a discrepancy between the title of the ordinance and the referendum petition: the title of the ordinance stated that the property at issue was "approximately 89.425 acres" but the referendum petition

stated that the property was "approximately 89.45 acres." *Id.* at 511-512, 515. This court held that there was no reasonable argument that such a "de minimis error" would mislead voters into signing the petition. *Id.* at 515. *Stutzman*, however, concerned a municipal referendum, and because the right of municipal referendum is reserved to the people by the Ohio Constitution, this court liberally construed the statutory provisions at issue in the case. *Id.* at 514-515; *see also* Ohio Constitution, Article II, Section 1f. And unlike the inaccuracy in the petition at issue in *Stutzman*, the difference between a tax rate of $452 and $382 for each $100,000 of appraised property value is not de minimis.

{¶ 28} The case that the board of education cites that is closest to the situation involved here is *South-Western City School Dist. Bd. of Edn.*, 2004-Ohio-4893, in which a board of education seeking to place a levy on the ballot properly passed a resolution to proceed. *Id.* at ¶ 2. It attempted to mail the resolution and other required documents to the board of elections, placing them in the mail nine days before the statutory deadline, but the board of elections never received the mailing. *Id.* at ¶ 3-4, 14. One day after the deadline, the board of education hand-delivered the documents to the board of elections. *Id.* at ¶ 4, 14. The board of elections refused to place the levy on the ballot, but the Tenth District Court of Appeals granted a writ of mandamus ordering the board of elections to place the levy on the ballot, holding that the board of education had substantially complied with the statutory requirements. *Id.* at ¶ 5, 26.

{¶ 29} *South-Western City School Dist. Bd. of Edn.* differs from this case in several key respects. In *South-Western City School Dist. Bd. of Edn.*, the Tenth District noted that although the resolution at issue had not been *certified* to the board of elections until after the statutory deadline, the board of education had adopted the resolution *before* the deadline. *Id.* at ¶ 21. Therefore, the public had more time than was required under the statute to assess the levy. *Id.* That is not the situation here. Because the board of education adopted a resolution with the

accurate estimated tax rate *after* the certification deadline, the public had less than 90 days to assess the levy. In addition, the board of elections in *South-Western City School Dist. Bd. of Edn.* stipulated that it could place the levy on the ballot without incurring additional expense or administrative inconvenience. *Id.* at ¶ 22. The board of elections here has not so stipulated. Finally, the deadline statute at issue in *South-Western City School Dist. Bd. of Edn.* was different from the deadline statute at issue here, and the Tenth District found that there was ambiguity regarding the deadline by which the resolution had to be delivered to the board of elections. *Id.* at ¶ 11-12. Here, there is no such ambiguity.

{¶ 30} The board of education's error was not merely a technical violation that did not affect the policies served by the election statutes. Requiring the board of elections to place the levy on the ballot would deny the public its full time under the statute to review the proposed levy, would impose additional costs and burdens on the board of elections, and would create uncertainty in the statutory election deadlines.

III. CONCLUSION

{¶ 31} The board of education failed to certify an accurate resolution to proceed to the board of elections "not later than four p.m. of the ninetieth day before the day of the election," R.C. 3501.02(F). Because the board of elections did not abuse its discretion or act in disregard of applicable legal provisions when it refused to place the levy on the ballot, we deny the writ.

Writ denied.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

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