From:	DeAnne Mangum (Rep. Mike Clampitt)
To:	Rep. Mike Clampitt
Subject:	FW: [External] Rep. Mike Clampitt
Date:	Thursday, January 07, 2021 11:40:18 AM
Attachments:	Clarification on Use of Elections Funds for Bonuses and Hazard Pay.msg

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From: Tornow, Kelly <Kelly.Tornow@ncsbe.gov>
Sent: Thursday, January 07, 2021 11:28 AM
To: DeAnne Mangum (Rep. Mike Clampitt) <DeAnne.Mangum@ncleg.gov>
Cc: Strange, Amy <amy.strange@ncsbe.gov>
Subject: RE: [External] Rep. Mike Clampitt

Hi DeAnne,

I was forwarded your email yesterday. The question Rep. Clampitt poses depends on the source of funds. There are a couple of different sources of CARES Act money, and they have different purposes. Please see the attached email that was sent to county governments by NCPRO – the same was sent to county boards of elections by SBE Executive Director Karen Brinson Bell.

In short, if the funds are coming from Election Security Grant funds (authorized by Session Law 2020-17), it would not be permissible for a board of county commissioners to redirect that funding to the county budget due to not having a policy for COVID bonus/hazard pay.

The federal CARES Act was signed into law on March 27, 2020, and includes federal funds (with a required state matching amount) to provide states with additional resources to protect the 2020 elections from the effects of COVID-19. Funding is specific to elections and elections-related costs. According to the U.S. Election Assistance Commission (EAC), to be allowable under a grant, costs must be "necessary, reasonable and allocable" to the grant. This is an assessment each state makes, but the EAC is of the opinion that expenditures related to the protection of the health and safety of poll workers, staff, and voters during federal elections as well as those resulting from unanticipated increased demand for vote by mail costs (e.g. printing ballots, postage, etc.), equipment, temporary staff, and similar costs due to COVID-19 would satisfy these elements.

Section 11.1 of Session Law 2020-17 appropriated the required State matching funds to the State Board of Elections to "prevent, prepare for, and respond to the coronavirus pandemic during the 2020 federal election cycle." Section 11.1(b) requires the State Board of Elections to make base allocations of the funds to the county boards of elections based on the NC Department of Commerce's 2020 County Tier Designations. Section 11.1(c) of the act requires the State Board to allocate any remaining funds to counties "on a per registered voter basis *for expenses eligible under the CARES Act*" (emphasis added). Base allocations to the county boards must be used to address the coronavirus pandemic, including, *but not limited to*, the following:

(1) Providing for increased postage costs for mail-in absentee ballots sent out by the county board of elections.

(2) Ensuring an adequate number of poll workers by (i) use of advertising or

public awareness campaigns or (ii) offering incentive compensation and other pay increases.

(3) Recruiting members and promoting the use of multipartisan assistance teams.

State Board legal counsel's position is that a county government does not have the legal authority to prevent county boards of elections from receiving or using CARES Act funding in accordance with federal and State law. The State legislation does not require approval of the county board of commissioners prior to use by the county board of elections; rather, the General Assembly requires the State Board of Elections to allocate the coronavirus-related funding to the county boards. Further, using CARES Act funding for hazard pay or overtime pay for election staff resulting from the COVID-19 pandemic is explicitly permitted. The 2020 CARES Act Grant FAQs document (accessible here: https://www.eac.gov/payments-and-grants/2020-cares-act-grant-faqs) states that funds can be used for a variety of pandemic-related personnel costs, including hiring temporary workers at increased pay rates, temporarily increasing existing employee pay, increasing hourly wages, and increasing pay for employees who report to work on-site during the pandemic.

In addition to the express legislative authorization for county boards of elections to receive this funding by and through the State Board of Elections – and absent any legislative requirement that the use of the funds be approved by the county board of commissioner prior to disbursement – preventing county boards of elections from using federal and state CARES Act funding does not comport with the NC Court of Appeals' ruling in *Graham County Board of Elections v. Graham County Board of Commissioners*, 212 N.C.App. 313, 7122 S.E.2d 372 (2011). This is particularly true in circumstances where the county government is attempting to prevent the county board of elections from authorizing hazard pay or bonus pay to board of elections employees and staff. In the *Graham County* case, the court held that the county board of elections is a distinct legal entity from the county with the authority to sue and be sued, and that the board of elections staff is under the exclusive control of the county board of elections. Here is some direct language from that case: "The relationship established between the State Board of Elections, county boards of elections, and counties suggests county boards of elections are not integrated subcomponents of the counties. The members of the county boards of election are appointed and can be removed by the State Board of Elections. […] And the county boards of elections are required to comply with directives from the State Board of Elections. N.C. Gen. Stat. § 163-33. It is true, as the Board of Commissioners points out, that the county boards of elections are dependent on the counties for their funding. […] However, we believe the State Board of Elections' dominion over the local boards' conduct weighs more heavily than their reliance on the counties for funding." In that case, the Graham County Board of Commissioners voted to eliminate one of the Graham County Board of Elections' two full-time employee positions from the budget. It determined that the Graham BOE should operate with one full-time employee and one part-time employee. The Graham BOE hired two part-time employees, and as a result the Graham Board of Commissioners refused to pay one of the part-time employees, even though there were sufficient funds in the Graham BOE's budget to pay both part-time employees. The North Carolina Court of Appeals concluded that as long as the county board of elections remains within the budget allocated by the local board of county commissioners, the county board of elections has the sole authority to make personnel decisions. This intentional separation of general county government and county boards of election has been in effect in North

Carolina since 1899. One of the purposes is to prevent the elected county commissioners and their staff from directly controlling their election mechanism. Similarly, a county manager's role stems from the powers and duties granted to the manager under state law (see G.S. 153A-82), including directing and supervising the administration of all "county offices, departments, boards, commissions, and agencies *under the general control of the board of commissioners…*".

The county board of elections' authority over CARES Act funding is even more clear in this situation, where no county money is being appropriated and the use of the funds in no way impacts the county government's budget. CARES Act funding originates solely from federal and state grant sources, and the state has appropriated the money to the State Board of Elections – not the board of county commissioners – for use by the county boards.

For these reasons, State Board legal counsel's position is that a county government does not have the legal authority to prevent county boards from receiving CARES Act funding or from using those funds in accordance with federal and State law.

Thank you,

Kelly Tornow
Associate General Counsel
O: 919-814-0717
C: 919-414-3532

From: DeAnne Mangum (Rep. Mike Clampitt) <DeAnne.Mangum@ncleg.gov>
Sent: Wednesday, January 6, 2021 11:02 AM
To: Buie, Jessica <Jessica.Terrell@ncsbe.gov>
Subject: [External] Rep. Mike Clampitt

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He texted me this morning about an issue in Swain County. He would like assistance.

If I understand his question, he would like to know if a grant is awarded to a local BOE specifically, does the local county commission have the legal authority to redirect the funds to the county budget, because they say they do not have a policy for bonus/hazard pay for COVID?

If you have any questions, please let me know. If you need to talk to Rep. Clampitt for additional information, I will share his contact info. He is on the road and his cell phone coverage is spotty.

Thank you for your assistance,
DeAnne