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VITAL STATISTICS—LOCAL REGISTRAR—PRIMARY REGISTRATION DISTRICT, ALSO CITY HEALTH DISTRICT—HEALTH DISTRICT GOVERNED UNDER CITY CHARTER—REGISTRAR ENTITLED TO RETAIN FEES COLLECTED, EVEN THOUGH APPOINTED BY MAYOR OF CITY AND AT SAME TIME EMPLOYEE OF CITY IN ANOTHER CAPACITY—SECTION 3705.13 RC.

SYLLABUS:

The local registrar of vital statistics in a primary registration district which is also a city health district, which health district is governed under the provisions of a city charter, is entitled to retain the fees collected by him pursuant to Section 3705.13, Revised Code, even though he is appointed by the mayor of the city and even though he is at the same time an employe of the city in another capacity.

Columbus, Ohio, June 29, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have your request for my opinion which presents the following question: Is the clerk of the Division of Health and Sanitation of the Department of Public Safety of the City of Zanesville, who also serves

as registrar of vital statistics for the primary registration district embracing Zanesville, entitled to retain the fees which he receives as registrar under Section 3705.13, Revised Code, in addition to the compensation he receives as clerk, or is he required by Section 14 of the Charter of the City of Zanesville to deposit such fees in the city treasury?

Section 3705.13, Revised Code, which authorizes the fees referred to provides:

“Each local registrar of vital statistics shall be entitled to a fee for each birth, stillbirth, or death certificate properly and completely made out and registered with him and correctly copied and forwarded by him to the health commissioner and the department of health in accordance with the population of the primary registration district at the last federal census. The fee for each birth, stillbirth, or death certificate shall be:

“(A) In primary registration districts of over two hundred fifty thousand, five cents;

“(B) In primary registration districts of over one hundred twenty-five thousand and less than two hundred and fifty thousand, fifteen cents;

“(C) In primary registration districts of over fifty thousand and less than one hundred twenty-five thousand, twenty cents;

“(D) In primary registration districts of less than fifty thousand, twenty-five cents.

“The director of health shall annually certify to the county treasurers of the several counties the number of births, stillbirths, and deaths registered from their respective counties with the names of the local registrars and the amounts due each at the rates fixed in this section. Such amounts shall be paid by the treasurer of the county in which the registration districts are located. No fees shall be charged or collected by registrars except as provided by sections 3705.01 to 3705.30, inclusive, of the Revised Code.

Section 14 of the Charter of the City of Zanesville provides:

“Subject to the provisions of this charter as to the salary of councilmen, auditor, municipal judge, and mayor, council shall fix by ordinance, the salary or compensation of all officers and employes of the city government. The salary or compensation so fixed shall be reported to the civil service commission forthwith. The salary of any officer, employe, or member of a board or commission in the unclassified service of the city who was

elected or appointed for a definite term, shall not be increased or diminished during the term for which he was elected or appointed, *and all fees pertaining to any office shall be paid into the city treasury.*" (Emphasis added.)

The above quoted portion of the Charter of the City of Zanesville appears to be a proper exercise of the home rule power granted to municipalities under the Ohio Constitution. Of course, it is important to note that the provision governing the disposition of fees must be taken to relate not to "any office" which may exist within the geographical boundaries of the municipality, but to "any municipal office". I take it that the context of the section requires such an interpretation, and that if it did not, it would clearly constitute an absurd attempt to create an unconstitutional limitation on non-municipal officers. The critical question then is as to the character of the office of local registrar, for if the fees collected by the local registrar of vital statistics pursuant to Section 3705.13, Revised Code, pertain to a municipal office, then clearly Section 14 of the Charter controls their disposition. If they do not pertain to a municipal office, then Section 14 cannot control their disposition.

The collection of vital statistics in Ohio is provided for by Sections 3705.01 to 3705.99, Revised Code. The most important of these sections so far as this problem is concerned is the first, Section 3705.01, Revised Code, which creates the entire system. It provides:

"A state system of registration of births, deaths, and other vital statistics is hereby established, which shall consist of a central division of vital statistics in the department of health and primary registration districts. The central division shall be maintained at the capital of the state. The director of health shall have charge of such system, enforce sections 3705.01 to 3705.30, inclusive, of the Revised Code, and prepare and issue instructions necessary to secure the uniform observance of such sections. The public health council may adopt such regulations as are necessary to insure that this state shall have a complete and accurate registration of vital statistics. No system of registration of births, deaths, and other vital statistics shall be maintained in any political subdivision in conflict with such sections. The department of public works shall provide the division with suitable quarters which shall be properly equipped with fireproof vault and filing cases for the permanent preservation of all records made and received as provided by law or under regulations adopted by the council." (Emphasis added.)

The very premise of this section is that the legislature was creating a state agency. The state agency has two parts—a central division, and primary registration districts. The entire system or agency is directed by a state official, the Director of Health, and specific prohibition is made of any conflicting system which might be established by some political subdivision. Thus not only is a state system established, but it is protected from competition. The public health council, in addition, has a rule making power to insure a *complete* state system.

The primary registration districts are created by Section 3705.07, Revised Code, which provides:

“The state shall be divided into registration districts. Each health district created by section 3709.01 of the Revised Code constitutes a primary registration district, provided that the director of health may combine two or more primary registration districts, and may establish any state hospital, or other public institution, as a primary registration district.”

Section 3709.01, Revised Code, provides in part:

“The state shall be divided into health districts. Each city constitutes a health district and shall be known as a ‘city health district.’” * * *

Thus the city of Zanesville, by reason of being a city health district, also constitutes a primary registration district in the state system for registration of vital statistics. Even though the boundaries of the primary registration district are coterminous with the city health district, it does not follow that the registration district becomes, thereby, an agency of the health district. Likewise, the identity of boundaries does not create a municipal agency. The city of Zanesville, therefore, constitutes one of the many parts of the second division of a state system; the first division being located in the department of health.

Local registrars of vital statistics in primary registration districts are appointed by the board of health of the health district, upon recommendation of the health commissioner. Section 3705.08, Revised Code. This is true *except* in cities such as Zanesville where there is no board of health nor a health commissioner, but where the health district is in effect administered under a city charter. This exception to the general statute is specifically created by Section 3709.05, Revised Code, which provides in part as follows:

“Unless an administration of public health different from that specifically provided in this section *has been established and main-*

*tained under authority of its charter prior to September 4, 1941, the legislative authority of each city constituting a city health district shall establish a board of health, composed of five members appointed by the chief executive and confirmed by the legislative authority, to serve without compensation. * * **

(Emphasis added.)

Section 117 of the Charter of the City of Zanesville creates a Division of Health and Sanitation in the Department of Public Safety. Section 134 creates the office of Superintendent of Public Health and Sanitation and imposes, among others, the duty to "perform all the duties required of health officers by national and state laws and by the ordinances of the city council". These provisions of the charter were in effect for some years before the critical date of September 4, 1941, and thus the health laws of the state are administered in a different manner in Zanesville than in most other city health districts. Under this system, the local registrar of vital statistics is not appointed by the board of health, there being no such body, but is appointed by the mayor, acting through the Director of Public Safety. It is quite important to note that in the case presented, the clerk of the Division of Health and Sanitation is appointed in a like manner. However, though one person holds both positions, the appointments, I am told, are made separately, and there is no authority commanding that the clerk be also appointed registrar.

The problem is thus reduced to this: does the unusual method of administration of the health district, resulting as it does in the appointment of the local registrar by the mayor, change the character of the office of local registrar from that of a state agency to that of a municipal agency, so that provisions of a municipal charter will control it?

A similar problem, though with respect to health districts, was considered in *State, ex rel. Mowerer, v. Underwood et al.*, 137 Ohio St. 1. In that case, the city of Akron had by charter provided for the appointment of a health commission and a director of public health to enforce and administer health laws in the city health district of Akron. Also in the charter, but not in the state health law, was a provision requiring that all except certain named employees be appointed from eligible lists to the classified civil service system. The purpose of the suit was to compel the Civil Service Commission to establish eligible lists for the positions in the department of health of the city and to compel the Director of Public Health and the commission to make appointments from such lists. The

question before the Court was quite like that before us: was the department of health a municipal agency so that the charter requirement of civil service would control, or was it a state agency even though administered under a charter provision? The syllabus of the Court's opinion is as follows:

“When the state, by legislative enactment, withdraws from cities the health powers previously granted to them and transfers them to newly created city health districts, such health districts become agencies of the state government, and their employees are governed by state law.”

Whether or not the specific application of this decision has been affected by the subsequent legislative provision for charter health administration, if such was in effect prior to September 4, 1941, I deem that decision controlling of the instant question. There has been no such legislative permission granted to cities to alter by charter the state system of vital statistics, and a city is therefore without power to change the very nature of a state system by establishing a charter administration of health. In practical effect, a state agency is created in every primary registration district, and the office of registrar becomes a state office and remains such even though in certain instances the mayor of a charter city may be substituted for the board of health as the appointing authority. Even in such instances, we must bear in mind that sub-registrars in the district are appointed not by the mayor but by the local registrar, and *with the approval of the department of health*. Section 3705.09, Revised Code. The same is true of the mandatory duty of the local registrar to appoint a deputy registrar. This makes more evident the state character of the agency.

In this particular instance, I am further convinced of the legislature's intention to assure the local registrars of the fees authorized in Section 3705.13, Revised Code, for Section 3705.05, Revised Code, which also authorizes a fee for the local registrar, concludes with this sentence:

“* * * If the local registrar is a regular salaried employee of a city health district, said fee shall be paid into the general fund of the city.”

The absence of this provision eight sections later in the same chapter, dealing with the same office and the fees thereof, leads me to believe that the legislature expressed a definite interest in maintaining the fees of Section 3705.13, Revised Code, for the local registrar regardless of additional compensation which he might receive for other work. These fees

are paid to the registrar based upon the number of vital statistics which he has forwarded to the central division in the department of health, and I think it logical to assume that the legislature was providing an incentive to the registrar for complete registration with the central division, which incentive it did not want removed. This reasoning only further supports the conclusion which I have indicated above.

It is therefore my opinion that the local registrar of vital statistics in a primary registration district which is also a city health district, which health district is governed under the provisions of a city charter, is entitled to retain the fees collected by him pursuant to Section 3705.13, Revised Code, even though he is appointed by the mayor of the city and even though he is at the same time an employee of the city in another capacity.

Respectfully

C. WILLIAM O'NEILL
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