

729.

BOARD OF EDUCATION—LOCAL SCHOOL DISTRICT—BOARD OF HEALTH—EMPLOYMENT—PHYSICIANS, NURSES—DISCRETION TO PAY CERTAIN EMPLOYEES—LEGAL LIMITATIONS TO CONTRIBUTE PART OF SALARY—SECTIONS 7692, 7639, 1261-22 G. C. ETC.

SYLLABUS:

Where a board of education of a local school district delegates to the board of health of a general health district of which it is a part, the powers and duties conferred upon said board of education with respect to the employment of physicians and nurses as provided by Section 7692 of the General Code of Ohio and the said board of health assumes the same the said board of education may in its discretion pay compensation to the employes of the board of health in addition to that provided for them by the said board of health but may not lawfully contribute to the board of health a part of the salary of said employes as fixed by the said board of health.

COLUMBUS, OHIO, June 9, 1939.

HON. NORTON C. ROSENTRER, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion, which reads:

"For some years the Board of Education of the Port Clinton Exempted Village School District has paid a one-fifth part of the annual salary of the county school nurse, for which the Board was to receive in return one-fifth of the county nurse's time devoted to the welfare of the children attending schools in the Port Clinton Exempted Village School District.

This year this arrangement ceased and all of the salary of county nurse is being paid by the County Board of Health. Adequate and satisfactory service is being given by the nurse to the pupils attending the Port Clinton Schools. However, the school board is still ready and willing to pay a portion of this salary, as in the past, but because several of the members of the Board are of the opinion that the school board is not legally authorized to pay under these circumstances, I have been requested to procure an opinion from you to settle the matter."

I assume from your inquiry that the Board of Education of the Port Clinton Exempted Village School District does not employ a nurse or nurses by authority of Section 7692, General Code, and that the duties of the said board of education with respect to health are delegated to the board of health of the general health district in which the territory em-

bodied within the Port Clinton Exempted Village School District lies. The "county school nurse" spoken of being a nurse is employed by the board of health of the said general health district.

Said Section 7692, General Code, provides that boards of education of each and every school district in the state may appoint at least one school physician and at least one school dentist. Section 7692-1, General Code, sets forth the duties to be performed by such school physician and dentist if the same are appointed, by way of making inspections and examinations of school children, teachers and janitors within the school district and school buildings within said district, with a view to studying and reporting the prevalence of disease in the district and providing for the prompt diagnosis and control of communicable diseases. Section 7692, General Code, also provides in part, that:

"Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board."

The said statute further provides:

"Such board may delegate the duties and powers herein provided for to the board of health or officer performing the functions of a board of health within the school district, if such board or officer is willing to assume the same. Boards of education shall cooperate with boards of health in the preventing of epidemics."

The board of health performing the functions of a board of health within the territory of the Port Clinton Exempted Village School District is the board of health of the general health district of which the territory of said school district is a part.

For the purposes of local health administration the state is divided into health districts. Each city is constituted a district known as a city health district. The townships and villages within each county outside the cities constitute health districts which are known as general health districts. (See Section 1261-16, General Code.) Provision is also made for a union of two general health districts and for a union of a general health district and a city health district located within such districts. (See Sections 1261-16, 1261-20 and 1261-21, General Code.) For each class of district there is to be a board of health. (See Sections 1261-17 and 4404, General Code). In a general health district a health commissioner is appointed. (See Section 1261-19, General Code.)

Provision is made for the employment of health nurses in general health districts by Section 1261-22, General Code, the pertinent provisions of which are as follows:

"In any general health district the district board of health may upon the recommendation of the health commissioner appoint

for whole or part time service a public health nurse and a clerk and such additional public health nurses, physicians and other persons, as may be necessary for the proper conduct of its work. Such number of public health nurses may be employed as is necessary to provide adequate public health nursing service to all parts of the district. * * *

Whether or not the township and villages of Ottawa County constitute a general health district or whether they have been combined with another general health district to form a union general health district I am not advised, and for the purposes of this opinion it is not material as it is manifest that the Port Clinton Exempted Village School District lies in a general health district and that the board of health of that district is empowered to and does employ and pay a nurse who is now and has been acting in that capacity with respect to the schools of said district. A portion of the salary of nurses employed by district boards of health is borne by the state. (See Section 1261-39, General Code.)

The question here presented is whether or not the board of education under these circumstances may pay from board of education funds a portion of the salary as fixed and paid by the district board of health to the nurse in question. With respect thereto, the provisions of Section 7693, General Code, are pertinent: This statute provides as follows:

“The board of education of any school district, may provide and pay compensation to the employes of the board of health in addition to that provided by the city, township or other municipality.”

Practically the same question here presented was considered by a former Attorney General, and his opinion with respect thereto will be found in the published Opinions of the Attorney General for 1933, at page 1272. The syllabus of this opinion reads:

“A board of education may not contribute to a city a part of the salary of a public health nurse employed by the city health district, but may pay the nurse compensation in addition to that paid by the health district in the event the board of education delegates the duties and powers of a school physician and nurse to the board of health of the city health district.”

In the course of the said opinion the Attorney General after quoting the provisions of Section 7693, General Code which is quoted above, said:

“It will be observed from a reading of the foregoing statute, that the authority extended to a board of education to pay compensation to the employes of the board of health in addition to

that provided by the subdivision of which they are employes, does not authorize the payment by the board of education to the subdivision but to the employe, and whatever is paid by the board of education is in addition to the salary fixed for the employe by the subdivision employing him.

It can not properly be said that a board of education is authorized to contribute to a city health district a part of the salary of a public health nurse employed by the health district but the board may pay the nurse compensation in addition to that paid by the city health district."

The facts considered in the above 1933 opinion are very much the same as are those upon which your inquiry herein is predicated except that in the 1933 opinion a city health district instead of a general health district was involved, but the principle is the same, and I believe the doctrine of the 1933 opinion applies in the instant case.

I am therefore of the opinion, in specific answer to your question that, the board of education of the Port Clinton Exempted Village School District under the circumstances mentioned, is not empowered to pay a portion of the annual salary as fixed by the district board of health for a district health nurse but may pay the nurse compensation in addition to that paid by the health district if it sees fit so to do.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

730.

CONTRACT—STATE WITH GEM CITY ELEVATOR WORKS, INC., CONSTRUCTION AND COMPLETION, ELEVATOR AND DUMB WAITER, NEW KITCHEN, CENTRAL DINING HALL AND COLD STORAGE, LONGVIEW STATE HOSPITAL, CINCINNATI.

COLUMBUS, OHIO, June 9, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval, the contract by and between Gem City Elevator Works, Inc., of Dayton, Ohio, and the State of Ohio, acting through you as Director of the Department of Public Works for the Department of Public Welfare, for the construction and completion of Contract for Elevator and Dumbwaiter for a project known as New Kitchen, Central Dining Hall and Cold Storage, Longview State Hospital, Cincinnati, Ohio, as set forth in Item 5, Contract for