

Finding, as I do, that the proceedings as shown by the transcript are in conformity to law, I am indicating my written approval to the proposed sale by signing the duplicate transcript, returned herewith.

Respectfully,
C. C. CRABBE,
Attorney General.

1425.

PHYSICIAN MAY BE EMPLOYED AS HEALTH COMMISSIONER BY
TWO OR MORE HEALTH DISTRICTS.

SYLLABUS:

A physician may be employed by two or more health districts as health commissioner on a part time basis, when it is physically possible for one to do so.

COLUMBUS, OHIO, May 5, 1924.

HON. JOHN E. MONGER, *Director of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

“Section 1261-19 G. C. provides:

“The (general) district board of health shall appoint a district health commissioner upon such terms and for such periods of time, not exceeding two years, as may be prescribed by the district board. Said appointee shall be a licensed physician and shall be secretary of the board and shall devote such time to the duties of his office as may be fixed by contract with the district board of health.”

Section 4408 G. C. provides:

“In any city health district, the board of health or person or persons performing the duties of a board of health shall appoint for whole or part time service a health commissioner and may appoint such public health nurses, clerks, physicians and other persons as they deem necessary.”

“With the sanction of this department and in the belief that such action was legal, the board of health of a general health district and the board of health of a city health district located in the same county, have by mutual agreement selected the same physician to serve on a part time basis as health commissioner in each district.”

“Please let me know if there is such incompatibility in these two offices as would make such employment illegal.”

Section 1261-19, General Code, as far as pertinent, provides:

“* * * The district board of health shall appoint a district health commissioner on such terms, and for such period of time, not exceeding two years, as may be prescribed by the district board. Such appointee shall be a licensed physician and shall be secretary of the board and shall devote such time to the duties of his office as may be fixed by contract with the district board of health.”

This section relates to general health districts and provides for the appointment of a district health commissioner for a term not to exceed two years, provides that

he shall be a physician and devote his time to said duties as fixed by contract. There is no qualification that he shall be a resident of the health district.

Section 4408, General Code, provides:

"In any city health district, the board of health or person or persons performing the duties of a board of health shall appoint for whole or part time service a health commissioner and may appoint such public health nurses, clerks, physicians, and other persons as they deem necessary."

This section relates to a city health district and is similar to section 1261-19, supra.

A careful survey of all statutes relating to both general and city health districts reveal that there is no statutory inhibition against the same person holding both offices.

In the case of *State ex rel. vs. Gebert*, 12 Cir. Ct. (n. s.) 274, it was held:

"Offices are considered incompatible when one is subordinate to or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both."

As the health commissioner in both city and general health districts is limited in jurisdiction to his respective district, it is impossible that either could be "subordinate to, or in any way a check upon the other."

As you have stated that both districts have selected the same physician on a part time basis, it would not be physically impossible for one person to discharge the duties of both offices unless the district last contracting with said physician would contract for more of the time of the physician than was remaining to be contracted for.

It is therefore my opinion that a physician may be employed by two or more health districts as health commissioner, on a part time basis, when it is physically possible for one to do so.

Respectfully,
C. C. CRABBE,
Attorney General.

1426.

MUNICIPALITY—AUTHORITY TO ISSUE BONDS UNDER ITEM 3 OF SECTION 3939 G. C. DISCUSSED.

SYLLABUS:

A municipality may not under item 3 of section 3939 G. C. issue bonds to provide funds for operation of a garbage and refuse collection department.

COLUMBUS, OHIO, May 5, 1924.

Attention: Mr. Andrew H. Foster.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication as follows: