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HEALTH COMMISSIONER—GENERAL HEALTH DISTRICT—
POSITION CAN BE HELD ONLY BY PHYSICIAN LICENSED
TO PRACTICE IN OHIO.

SYLLABUS:

The position of health commissioner of a general health district can be held only by a physician who is licensed to practice in Ohio.

Columbus, Ohio, April 4, 1956

Hon. J. L. MacDonald, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would very much appreciate your opinion on the following questions pertaining to the employment of a health commissioner by the board of health of a general health district.

“Section 3709.11 of the Revised Code provides for the organization of a board of health of a general health district and the appointment of a health commissioner. This section reads, in part, as follows: ‘The board shall appoint a health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the board. Said appointee shall be a licensed physician * * *.’

“Can a board of health of a general health district enter into a legally binding contract of employment with a physician who is licensed to practice medicine in a state other than the State of Ohio, but who has not been issued a certificate by the Ohio State Medical Board as provided in Section 4731.29 of the Revised Code of Ohio?

“Do the laws of Ohio, and specifically Section 3709.11 of the Revised Code, require the health commissioner of a general health district to be the holder of a certificate from the Ohio State Medical Board?”

Section 3709.11, Revised Code, pertaining to the appointment of a health commissioner of a general health district, reads in part as follows:

“ * * * The board shall appoint a health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the 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 board. * * * The commissioner shall be the executive officer of the board and shall carry out all orders of the board and of the department of health. * * * ”

It will be noted that the board of health has the authority to employ a health commissioner for any length of time the board may desire, not exceeding two years, and to enumerate the duties of the commissioner. There is nothing in the above quoted section, however, nor in any other code section dealing with general health districts, that *specifically* requires a health commissioner to be a physician licensed to practice in Ohio.

When the General Assembly created the general health districts there was no requirement that the health commissioner be a licensed physician. 108 Ohio Laws, Part I, p. 238. However, during the same legislative session the law was amended by inserting the requirement that a health commissioner must be a licensed physician. 108 Ohio Laws, Part II, p. 1086. It is apparent that the legislature inserted the phrase “licensed physician” as a means of establishing certain qualifications for the position of health commissioner.

When the legislature enacted the laws creating general health districts and providing for the appointment of health commissioners of such districts, it can be presumed that they were well aware of the Ohio law under which all physicians who practice in this state are licensed. Conversely, it cannot be presumed that the legislature knew of the laws of other states under which physicians are licensed nor the standards set for such licensing by such foreign laws. Thus, since the phrase “licensed physicians” was inserted as a means of setting up certain qualification for the position, I believe it is obvious that the legislature has reference to only Ohio licensed physicians since the Ohio standards for licensing are the only standards of which the legislature can be presumed to have had knowledge. If such an interpretation is not given to this language it would be possible for a person to obtain a physician’s license in other states or in foreign nations, where the standards for licensing are different and possibly materially lower than in Ohio. Such a situation would clearly thwart the legislative object to establish adequate qualifications for the position in question.

Under Section 1, Article II of the Constitution of Ohio, the legislative power of the state is vested in the General Assembly. It is firmly established that the General Assembly cannot delegate its legislative power and that any attempt so to do is unconstitutional. If "licensed physician" is interpreted to include a physician licensed in another state it would mean that the legislature was, indirectly, delegating its power to set certain qualifications for the position of health commissioner. This result is unavoidable for the obvious reason that any state or foreign nation could change its standards for licensing of physicians at any time and without the consent of the Ohio legislature. This would in effect mean that such a foreign state, by changing its own law, could change the qualifications necessary for the position of health commissioner of a general health district in Ohio. As pointed out above, such a delegation of legislative power is prohibited.

Accordingly, in specific answer to your inquiry, it is my opinion that the position of health commissioner of a general health district can be held only by a physician who is licensed to practice in Ohio.

Respectfully,

C. WILLIAM O'NEILL

Attorney General