

1754.

LEGALLY QUALIFIED PHYSICIAN EMPLOYED TO TREAT SICK AND INJURED MEMBERS OF POLICE AND FIRE DEPARTMENTS, MAY ALSO BE EMPLOYED BY BOARD OF HEALTH TO TREAT INDIGENT POOR OF CITY OF COLUMBUS.

**SYLLABUS:**

*A legally qualified physician and surgeon, employed to treat sick and injured members of the police and fire departments at an annual salary may also be employed by the board of health to furnish medical attention to the indigent poor of the City of Columbus, and receive compensation for his professional services so rendered.*

*The said dual arrangement is not a violation of section 3808 G. C., nor section 12912 G. C., nor section 227 of the Charter of the City of Columbus.*

COLUMBUS, OHIO, September 15, 1924.

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

Gentlemen:—

This will acknowledge receipt of your letter of the 8th instant requesting my opinion as follows:

“Section 3808 G. C. provides that no member of council, board, officer, or commissioner of the corporation shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation.

Section 12912 G. C. provides a penalty when an officer of a municipal corporation or member of council thereof is interested in the profits of a contract, job, work or services for such corporation.”

Section 227 of the charter of the City of Columbus reads as follows:

‘No officer or employe of the city shall have any interest, direct or indirect, in any contract with the city or be interested, directly or indirectly, in the sale to the city of any supplies, material, service or land, except on behalf of the city as an officer or employe. Any wilful violation of this section shall constitute malfeasance in office, and any such officer or employe shall thereby forfeit his office or employment.’

Council of the City of Columbus, by ordinance, has provided for and fixed the compensation of two police and fire department surgeons, whose duty it is to treat sick and injured members of such departments. Said surgeons are legally qualified physicians, and said compensation is an annual salary.

The local board of health is charged with the duty of furnishing medical attention to the indigent poor of the city and for such purpose have contracted with a group of physicians, twenty in number, who receive \$3.00 from the city's public health fund for each professional call made upon orders of such board of health.

The two physicians employed by the city as surgeons for the fire and police departments are included in the group of twenty with whom the board of health has contracts.

QUESTION: In view of the above mentioned sections of the General Code and Charter, may the physicians, receiving compensation as surgeons for the police and fire departments legally receive additional compensation as physicians for the local board of health?"

We have very little difficulty in arriving at a correct answer to your inquiry so far as section 3808 G. C. is concerned. We think it is quite clear that the physicians employed in the capacities mentioned in your letter are not officers within the contemplation of the law.

A question of some difficulty, however, is presented when we come to examine the charter provisions of the City of Columbus enacted in section 227 above quoted. The question turns upon what is contemplated by "employee of the city."

In an opinion of the Attorney General, 1913, Volume 1, page 249, the syllabus reads as follows:

"Since none of the indicia usually connected with a public officer are present in the case of a health officer; since the incumbent of that position is subject to the will of the board of health, as to the nature of his duties, as to his term of office, and to his salary, he is not to be considered a public officer and therefore does not come within the terms of either section 3808 or section 12912, General Code, prohibiting the allowance of compensation to municipal officers for work, services or materials furnished in addition to those required by the office."

The concluding paragraph in the above mentioned opinion is as follows:

"I therefore hold that the health officer is not such an officer of the municipal corporation as is comprehended by the terms of either section 3808 or section 12912, General Code, and that he may properly be allowed compensation for professional attendance upon injured firemen."

In the case of State vs. Craig, 69 O. S., 236, the second paragraph of the syllabus is as follows:

"2. A health officer is not an employe, as that word is used in section 189 of the new Municipal Code."

The court, in considering the subject of what constitutes an employe under the Municipal Code of Ohio, on page 246 of its opinion uses the following language:

"It is further urged by counsel for Dr. Craig, that when the new municipal code took effect, May 4, 1903, he was an employe, serving in the health department, and that therefore, he would continue to hold his position as provided in the latter part of section 189 of the new code. This is not tenable. The part of the section relied upon is as follows:

'All employes now serving in the health department shall continue to hold their said positions and shall not be removed from office or reduced in rank or pay, except for cause, assigned and after a hearing has been afforded them before the board.'

Is the health officer an employe as that word is used in the statutes? We think not. He is known as a health officer throughout the statute, and

in section 2115 is spoken of as an appointee, but nowhere as an employe. It is urged that the general assembly in the use of the word employe meant appointee, but as there may be both employes and appointees in the health department, and as the general assembly has legislated as to each it must be held that when it used the word employe, it meant what it said, and did not mean appointee or health officer.

And even if the word employe means and includes a health officer, then such employe as such health officer will, under section 2115, Revised Statutes, serve in said office only during the pleasure of the board of health, and in this case the board indicated its pleasure by the appointment of Dr. McCullough, May 15, 1903, that Dr. Craig should no longer serve as such health officer. It being clear under section 2115 that a health officer can serve only during the pleasure of the board, his term of service cannot be extended by the doubtful word employe found in section 189 of the new code.

It is therefore clear, from every point of view, that Dr. Craig ceased to be health officer when Dr. McCullough was appointed to that office and qualified, and that Dr. McCullough, by his appointment and qualification, became and is the legal health officer of the said city of Mansfield.

Judgment of ouster will be rendered against Dr. Craig, and an order of induction awarded in favor of Dr. McCullough."

In the Opinions of Attorney General, 1914, Volume 1, page 892, the second paragraph of the syllabus is as follows:

"2. The assistant city solicitor may legally be appointed to membership upon such commission and may receive the compensation fixed for his services in this connection, and in addition to receiving his regular annual salary as assistant city solicitor."

Also in the Opinions of Attorney General, 1915, Volume 1, page 981, the syllabus reads as follows:

"A board of health is empowered to employ a health officer to perform physicians' services in quarantine cases, under section 4436 G. C., and said health officer may be compensated by the municipality in addition to his salary for such services as are not within his duties as health officer when the persons quarantined are unable to pay."

Bouvier at page 1035 in defining what constitutes an employe says:

"Strictly and etymologically, it means 'a person employed,' but in practice, in the French language, it ordinarily is used to signify a person in some official employment, and as generally used with us, though perhaps not confined to any official employment, it is understood to mean some permanent employment or position."

The positions mentioned in your letter, it would seem, are not those of employes within the definitions mentioned in the above authorities. They are professional services of regular practicing physicians. The positions are not incompatible. It is physically possible for the same physician to perform the services of both positions, unless, of course, they should be called for at the same instant of time, which is hardly probable.

Taking this view of the case, and in the light of the foregoing authorities, it is therefore my opinion that the employment mentioned in your letter is not illegal.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

1755.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND D. W. McGRATH & SONS, OF COLUMBUS, OHIO, FOR CONSTRUCTION AND COMPLETION OF THE GENERAL ITEMS AND PLASTERING ITEMS FOR ANIMAL HUSBANDRY BUILDING, OHIO STATE UNIVERSITY, AT COST OF \$141,900.00.—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY & GUARANTY COMPANY.

COLUMBUS, OHIO, September 15, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

Dear Sir:—

You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works and D. W. McGrath & Sons, of Columbus, Ohio. This contract covers the construction and completion of the general items and plastering item for the Animal Husbandry Building, Ohio State University, and calls for an expenditure of \$141,900.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the United States Fidelity & Guaranty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*