

cise police powers have all the powers of police officers in the enforcement of regulations and rules of the board of park commissioners, and therefore may arrest and execute warrants in the same manner as police officers, yet by reason of their limited jurisdiction as provided in Section 2976-10h, they can not pursue a fugitive in any county in the state, but may only pursue a person accused of violating the rules and regulations of a board, who flees from justice or is not found in the county in which the offense was committed, into such part of another county which is adjacent to the park district in which the offense was committed.

3. Where an employe arrests a person with or without a warrant in the county in which the offense was committed he is not lawfully entitled to compensation for such service. However, if he is directed in a warrant by a magistrate to execute such warrant charging a person with a violation of the rules and regulations of a board of park commissioners in the county in which the park district is located and he is required to pursue the offender into part of another county which is adjacent to the park district in which the offense was committed, such employe is entitled to be paid the necessary expense of such removal and reasonable compensation for his time and trouble, as provided by Section 13432-10 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2999.

DISTRICT HEALTH COMMISSIONER—PHYSICIAN WHO HAS BEEN A MEMBER OF THE DISTRICT BOARD OF HEALTH MAY BE APPOINTED COMMISSIONER WHEN—DISTRICT HEALTH COMMISSIONER AND PHYSICIAN FOR OHIO REFORMATORY FOR WOMEN COMPATIBLE—EXCEPTION.

SYLLABUS:

1. *A physician who has heretofore been a member of the district board of health may be appointed by such board as district health commissioner, providing such physician resigned as a member of the district board of health before any action was taken as to his appointment.*

2. *The office of district health commissioner and physician for the Ohio Reformatory for Women may be held by one and the same person except in cases wherein the contract of employment for either office is so drawn as to require the devotion of full time to the duties of either office which would result in it not being possible to perform the duties of the other office.*

COLUMBUS, OHIO, February 26, 1931.

HON. GWYNN SANDERS, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Hereto attached you will find a written statement of facts numbers 1 and 2, upon which I would like a written opinion.”

Attached to your communication are the following statements of facts and inquiries:

“Dr. S. of Marysville, Ohio, was the County Health Commissioner of Union County prior to his appointment as State Health Commissioner. Dr. M. of Marysville, Ohio, was a member of the County Board or

Distict Board of Health and is at the present time a member of this board. Dr. M. is an applicant for the position of County Health Commissioner of Union County.

Question: Is it legally possible for Dr. M. to accept the position as County Health Commissioner if he resigns as a member of the Board of Health of Union County?

Dr. M., the applicant named in the above question, is at the present time physician for the Women's Reformatory located near Marysville, Ohio.

Question: Is it possible for Dr. M. to become Health Commissioner of Union County and to also retain his position as physician for the Reformatory located at Marysville?"

In your inquiry you refer to a county board of health and the county health commissioner. Section 1261-16, General Code, provides as follows:

"For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act (G. C. §§1261-16 et seq.) shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district."

The provisions relative to the organization of a district board of health and the appointment of a district health commissioner are contained in Section 1261-19, which section is as follows:

"Within thirty days after the appointment of the members of the district board of health in a general health district, they shall organize by selecting one of the members as president and another member as president pro tempore. The district board of health shall appoint a district health commissioner upon such terms, and for such period 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. Notice of such appointment shall be filed with the state commissioner of health. The district health commissioner shall be the executive officer of the district board of health and shall carry out all orders of the district board of health and of the state department of health. He shall be charged with the enforcement of all sanitary laws and regulations in the district, and shall have within the general health district all the powers now conferred by law upon health officers of municipalities. It shall be the duty of the district health commissioner to keep the public informed in regard to all matters affecting the health of the district."

Although the foregoing section contains no language expressly prohibiting the board from appointing one of its own members as district health commissioner, express provision is made for the execution of a contract between the district health commissioner and the district board of health. It is also provided that

the district health commissioner shall carry out the orders of the district board of health. In the event the district board appointed Dr. M. prior to his resignation as a member of such board, in my opinion, the appointment would be invalid. There are no specific statutory provisions in the General Code prohibiting a member of a district board of health from being interested in a contract executed by the board, but the legislature has in numerous instances laid down the principle that public officers may not be personally interested in the expenditure of public funds under their control. Section 3808, General Code, prohibits any municipal officer from having any interest in the expenditure of money on the part of the corporation other than his fixed compensation. Section 4028 prohibits a member of a board of hospital commissioners from being interested in any contract concerning the institution. Sections 12910, 12911 and 12912 provide penalties for certain public officers being interested in contracts involving certain expenditures of public funds. Section 12912 was under consideration in the case of *State, ex rel, Winn v. Wichgar, Auditor*, 17 O. C. D. 743, the syllabus of which is as follows:

“A member of a municipal board of health is an officer of the municipality and as such ineligible to the office of district physician during his term and for one year thereafter, and he cannot therefor recover for services rendered in such capacity.”

This case would, by analogy, be worthy of consideration in answering your first question except for the fact that it was overruled in the case of *Stone v. Osborn, Mayor*, 24 O. A. 251, the sixth branch of the syllabus being as follows:

“Sale of municipal light plant and grant of franchise to member of municipal board of trustees, who continued as member until two days before he submitted bid for property, held not in violation of Section 12912, General Code, punishing municipal officers interested in municipal contracts during term or for one year thereafter.”

The principles laid down in 46 C. J. 1037, 1038, are in my opinion dispositive of the question of the invalidity of any action of the district board of health in appointing one of its own members as district health commissioner prior to his resignation. This text is as follows:

“A public office is a public trust and the holder thereof cannot use it directly or indirectly for a personal profit; and officers are not permitted to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public. Thus public officers are denied the right to make contracts in their official capacity with themselves, or to become interested in contracts thus made, or to take contracts which it is their official business to see faithfully performed; and a board cannot make a legal contract with one of its own members in respect of the trust reposed in it.”

In view of the foregoing and in specific answer to your first question, it is my opinion that a physician who has heretofore been a member of the district board of health may be appointed by such board as district health commissioner, providing such physician resigned as a member of the district board of health before any action was taken as to his appointment.

I find no statutory provisions prohibiting a person from holding the position of physician for the Ohio Reformatory for Women and at the same time serving as district health commissioner. A consideration of the duties relating to each

position does not raise any question of incompatibility in so far as one being a check upon the other or one being subordinate to the other is concerned.

A question involving similar principles was under consideration in an opinion appearing in Opinions of the Attorney General for 1929, Vol. II, p. 1208, the first branch of the syllabus being as follows:

"The office of county coroner and commissioner of a general health district may be held by one and the same person, except in cases wherein the contract of employment of such health commissioner is so drawn, under the provisions of Section 1261-19, General Code, as to require such health commissioner to devote full time to the duties of his office, which would result in such commissioner not being able to perform his duties as coroner."

Since the office of district health commissioner and physician for the Ohio Reformatory for Women are not otherwise incompatible, the foregoing opinion is dispositive of your inquiry.

It is accordingly my opinion that the office of district health commissioner and physician for the Ohio Reformatory for Women may be held by one and the same person except in cases wherein the contract of employment for either office is so drawn as to require the devotion of full time to the duties of either office which would result in it not being possible to perform the duties of the other office.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3000.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTY AS RESIDENT DISTRICT DEPUTY DIRECTOR—J. C. REICHELDERFER.

COLUMBUS, OHIO, February 26, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000.00, with surety as indicated, to cover the faithful performance of the duties of the official as hereinafter named:

J. C. Reichelderfer—Resident District Deputy Director—The Aetna Casualty and Surety Company of Hartford, Conn.

Finding said bond to have been properly executed, I have accordingly approved the same as to form, and return it herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3001.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN GUERNSEY COUNTY, OHIO.

COLUMBUS, OHIO, February 26, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*