In other words, the legislature clearly indicated that non-residence of a member of the general health district board, would create a vacancy.

Therefore, in specific answer to your second question, I am of the opinion that the member of the Stark County District Board of Health who resides in the city of Alliance has vacated his office by not residing within the confines of the Stark County General Health District.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2604.

MARATHON DANCE—WHEN IT MAY BE CONSIDERED A PUBLIC DANCE.

SYLLABUS:

Whether or not a marathon dance is a public dance or like entertainment within the meaning of Section 13393, *General Code, is a question of fact to be determined in each case.*

COLUMBUS, OHIO, November 28, 1930.

HON. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your request for my opinion on the following question:

> "Will you please give me an opinion as to whether or not the Marathon Dance is within the scope of Section 13393, or is it rather a public entertainment, having no relation to this section?"

Section 13393, General Code, which you mentioned in your letter, reads as follows:

> "No person shall give a public dance, roller skating or like entertainment in a city, village or township without having previously obtained a permit from the mayor of such city or village if such public dance, roller skating or like entertainment is given within the limits of a municipal corporation, or from the probate judge if such public dance, roller skating or like entertainment is given outside a city or village, or permit another so to do. All permits issued under the authority of this section shall be subject to revocation at all times. The provisions of this section shall not apply to charter cities where the licensing authority is vested in some other officer than the mayor."

It should be noted that the above section was originally Section 6945a of the Revised Statutes. Such section was part of an act passed March 22, 1906 (98 O. L. 61), entitled:

> "To supplement Section 6945 of the Revised Statutes of Ohio by enacting Sections 6945a, 6945b and 6945c, relative to public dance halls and roller skating rinks."

Said Section 6945a read as follows:

> "No public dance, roller skating or like entertainment shall be permitted or given in any building, hall, room or rink within any city or village within

> this state, without first having obtained a permit so to do from the mayor of the city or village in which said dance, roller skating or like entertainment is to be held or given."

When the Ohio General Code was adopted in 1910, Revised Statute 6945a became General Code 13393, which section was then amended in 1925 (111 O. L. 82) to cover territory outside of municipalities.

From the history of the section under consideration, it appears that the intent of the Legislature was to regulate public dance halls and roller skating rinks. This appears plainly from the title of the original act. Furthermore, it is to be noted that the words "public dance, roller skating or like entertainment" in the statute, as originally enacted (R. S. 6945a), have not been changed since.

In the consideration of your question it is to be kept in mind that penal statutes are strictly construed. This principle is so well founded that no citation of authority is necessary. Although the statute itself does not contain a penalty, nevertheless there was enacted in 1925 (111 O. L. 82) the supplementary Section 13393-2 which provides a fine or imprisonment for a violation of said Section 13393. Hence it must appear beyond a reasonable doubt that the marathon dance now under consideration is within the terms of the section.

It is proper for the moment to consider the force of the words "like entertainment". It is a general principle of law that where certain persons, objects or things are named and followed by general terms the general terms should be construed to apply to objects, persons or things of similar or like kind. This is known as the ejusdem generis rule. Applying said rule in the present instance, it is plain that the general term "like entertainment" should be construed to include only entertainments of the same nature as public dances and roller skating. In the case of *Rowland* vs. *State,* 104 O. S. 366, in considering the statute under consideration, the court said at page 369:

> "What principle of the constitution, state or federal, is violated by a denial of such permit it is difficult to comprehend. It is not sought to restrain the use of property as to all dancing, but only as to public dances, where all classes of people, regardless of morals, health, peace, or safety, are permitted to assemble, hodge podge, and associate together."

Under the construction of the Supreme Court, as noted above, it is obvious that public dances and public roller skating involve entertainments in which every person admitted to the hall is permitted to dance or roller skate. Therefore, in view of the *ejusdem generis* rule, above noted, like entertainment must be such entertainment as will also permit the public to take part.

Difficulty is encountered in giving a categorical answer to your question, however, in view of the fact that there is, so far as I know, no precise definition of just what constitutes a marathon dance. Of course, generally speaking, it is an endurance contest in which couples participate for prizes,—the winning couple being that which lasts the longest in the contest. The contestants are supposed to dance continuously with the exception of a certain limited time off during each hour.

Such a performance would in all probability be a public dance if the general public is invited to contest, even though after its start, it be limited to those who first enter. The fact that thereafter the public is excluded, would not deprive it of its public character, which inheres by reason of the general public being invited at the start.

On the other hand, if the contestants are not made up of the general public, but of certain hired performers, then quite obviously, it is not a public participation, and

accordingly, I would feel that it would not come within the purview of Section 13393, supra.

In any event, if the general public be permitted to dance within the same building or enclosure where the so-called marathon dance is in progress, there can be no question but what the whole may be properly termed as a public dance, and, hence, subject to the licensing requirements of the section.

In view of the lack of detail in the description of the so-called marathon dance, I am unable to give you a more categorical answer to your question.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2605.

DISAPPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WESTERMAN CONSTRUCTION COMPANY, COLUMBUS, OHIO, FOR CONSTRUCTION OF POWER HOUSE AND EQUIPMENT AT LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, AT AN EXPENDITURE OF $63,446.00.

COLUMBUS, OHIO, November 29, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a certain contract entered into by and between the State of Ohio through you, as the Director of the Department of Public Works, and the Westerman Construction Company, of Columbus, Ohio, the successful bidder for the construction of power house and equipment at Longview State Hospital, Cincinnati, Ohio, which contract calls for an aggregate expenditure of sixty-three thousand, four hundred forty-six dollars ($63,446.00). With said contract, there have likewise been submitted files of the various proceedings had preliminary to entering into said contract and relating to the same.

Upon an examination of said files submitted, I find from a certificate over the signature of the Supervisor of Plans and Contracts, that plans, specifications, bills of material, estimate of cost and copy of notice to bidders with respect to said proposed improvement have been filed in the office of the Auditor of State as required by law.

There has also been submitted as a part of said files an encumbrance estimate and a certificate over the signature of the Director of Finance as President of the Controlling Board, that the moneys necessary to meet said contract have been released by said board.

There has further been presented to me in the files submitted, evidence showing that notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded.

Finally, the files indicate that the laws relating to the Workmen's Compensation have been complied with.

There is, however, a step in the statutory procedure which will require disapproval of this contract. It seems that the bond which must accompany the proposal when it is filed under the terms of Section 2319, General Code, is valueless, because of the fact that the attorney in fact who signed the bond for the Globe Indemnity Company had no power to execute a bond in a sum equal to the total amount of the proposal, as required by said Section 2319. The power of attorney which is enclosed in the files, discloses that the said attorney in fact had power