

2820.

PROXY—MEMBER OF DISTRICT ADVISORY COUNCIL MAY NOT VOTE  
BY PROXY—ATTEMPTED PROXY VOTE VOID.

*SYLLABUS:*

1. *There is no legal authorization for a member of a district advisory council, created under authority of Sections 1261-18 et seq., General Code, who is absent from a regular or special meeting of such body, to vote by proxy.*

2. *Since there is no legal authority for proxy voting by the members of a district advisory council (Sections 1261-18 et seq., G. C.), any attempted votes so cast are void, and should not be counted for the purpose of determining whether action was or was not taken by such council, nor in determining whether a quorum was present at such meeting.*

COLUMBUS, OHIO, June 14, 1934.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

“Referring to Section 1261-18 of the General Code, you will find that in each general health district there is created a ‘District Advisory Council’ composed of the mayor of each village and the chairman of the board of trustees of each township in the county. This Advisory Council is required by law to meet on the first Monday of May of each year for the purpose of electing a member of the board of health, filling any vacancies that may exist in the board of health, and to receive the report of health activities during the past year.

In a number of cases question has been raised as to the authority of one of these designated members of the Advisory Council to have himself represented by proxy. In the past years this department has advised that as the statute prescribes the membership of the Council and has made no provision for representation by proxy, that such representation would not be legal. This advice of the department has not been questioned until this year when a prosecuting attorney advised the District Advisory Council of his district that absent members could be represented by proxy.

In order that the department may be in a position to properly advise in this matter in the future, I shall be glad to have your opinion as to the legality of proxy representation for an absentee member of the District Advisory Council of a general health district.”

Section 1261-18, General Code, referred to in your request, reads:

“Within sixty days after this act (G. C. §§ 1261-16 et seq.) shall take effect the mayor of each municipality not constituting a city health district and the chairman of the trustees of each township in a general health district shall meet at the county seat and shall organize by selecting a chairman and a secretary. Such organization shall be known as the district advisory council. The district advisory council shall proceed to select and appoint a district board of health as hereinbefore provided, having due regard to the equal representation of all parts of the district. Where the population of any municipality represented on such district

advisory council exceeds one-fifth of the total population of the district, as determined by the last preceding federal census such municipality shall be entitled to one representative on the district board of health for each fifth of the population of such municipality. Of the members of the district board of health, one shall be a physician. Annually thereafter the district advisory council shall meet on the first Monday in May for the purpose of electing its officers and a member of the district board of health and shall also receive and consider the annual or special reports of the district board of health and make recommendations to the district board of health or to the state department of health in regard to matters for the betterment of health and sanitation within the district or for needed legislation. It shall be the duty of the secretary of the district advisory council to notify the district health commissioner and the state commissioner of health of the proceedings of such meeting. Special meetings of the district advisory council shall be held on request of the district board of health or on the order of the state commissioner of health. On certification of the chairman and secretary the necessary expenses of each delegate to an annual or special meeting shall be paid by the village or township he represents. The district health commissioner shall attend all meetings of the district advisory council."

You will note that such section provides that:

(1) The advisory council shall meet once each year for the purpose of electing its officers, and other purposes mentioned in such section.

(2) Special meetings may be held as specified in such section.

The powers of such district advisory council, as granted by statute are quite analogous to boards of directors of a private corporation. There are decisions of many courts that the directors of a corporation can not vote at directors' meetings, by proxy, but they must be personally present and must act for themselves.

*Bank vs. Iron Co.*, 30 W. L. B., 382;

*Perry vs. Tuskaloosa Cotton Seed Oil Mill Co.*, 93 Ala. 364;

*State vs. Perkins*, 90 Mo. App. 603;

*1st National Bank vs. East Omaha Box Co.*, 2 Neb., 820;

*Craig Medicine Co. vs. Merchants Bank*, 59 Hun. (N. Y.), 16;

The reasons for this are stated variously by the courts:

"His personal judgment is necessary, and he cannot delegate his duties or assign his powers."

*Lipman vs. Kehoe Stenograph Co.* (Del. Ch.) 95 Atl. 895.

In the case of *Bank vs. Box Co.*, cited above, it is said:

"A director of a corporation cannot delegate his power to vote in the board of directors by giving his proxy to another person. He must be present in person for the purpose of consultation. Directors are elected to meet and confer and exchange ideas. They cannot vote or act in any other manner. A director, of course, cannot act or vote by proxy."

From an examination of the reported decisions in Ohio, it would appear that a like rule was applicable in the transaction of the business of municipal corporations. Thus, in the case of *State ex rel. Cline vs. Wilkesville Twp.*, 20 O. S., 288, it was held that one township trustee who intended to be absent from the state at the time of a meeting could not delegate to another of the trustees the

power to act in his stead at such meeting. See also *McCortle vs. Bates et al.*, 29 U. S., 419; *Merchant vs. North*, 10 U. S., 251.

It appears to me that the duties of a member of a public board, commission, public corporation or quasi-public corporation, are such as to require his presence at a meeting for the benefit of consultation and judgment *at least* to the extent required of directors of a private corporation, and for such reason cannot delegate their powers or attend a meeting by proxy.

I do not herein hold that the attempted action taken by such bodies, when a quorum was not present by reason of a count by proxies, may not be ratified or confirmed at a later meeting at which a quorum was actually present, such question is not now before me. It does, however, appear that such proxy votes could not be counted for determining whether action had been taken by such body.

Specifically answering your inquiry it is my opinion that:

1. There is no legal authorization for a member of a district advisory council, created under authority of Sections 1261-18 et seq., General Code, who is absent from a regular or special meeting of such body to vote by proxy.

2. Since there is no legal authority for proxy voting by the members of a district advisory council (Sections 1261-18 et seq., G. C.) any attempted votes so cast are void, and should not be counted for the purpose of determining whether action was or was not taken by such council, nor in determining whether a quorum was present at such meeting.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2821.

GOLF—MUNICIPALLY OWNED GOLF COURSE SUBJECT TO GREEN FEE TAX.

*SYLLABUS:*

*Municipal corporations owning golf courses, which they operate on the so-called "green fee plan", are subject to the green fee tax levied by Section 5544-2, General Code.*

COLUMBUS, OHIO, June 15, 1934.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your request for my opinion reading as follows:

"The question has arisen as to the taxability of 'green fees' collected for golfing privileges upon courses located within parks owned by municipalities, such courses being operated by the municipalities owning the parks.

The specific question presented is as to whether or not the term 'Corporations', as the same is employed in Section 5544-1, Ohio General Code, includes such corporations as municipalities and 'Boards of Park Commissioners'.