

983.

BOARD OF TRUSTEES OF DISTRICT TUBERCULOSIS HOSPITAL—
MAY ELECT ONE OF THEIR MEMBERS SECRETARY OR TREASURER—MUST BE QUALIFIED.

The board of trustees of district tuberculosis hospitals, built and maintained under sections 3148, et seq. G. C., may legally elect one of their own members as secretary or treasurer of such board; provided, however, that such election will not legally affect the statutory duty and responsibility of such trustees and such secretary or treasurer may not be legally paid for his services as such.

COLUMBUS, OHIO, February 3, 1920.

HON. SUMNER E. WALTERS, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

“Calling your attention to sections 3148 et seq. of the General Code, relating to district tuberculosis hospitals, I desire your answer to the following questions:

1. May the board of trustees of a district hospital built and maintained under the sections referred to, lawfully elect one of their number as secretary and one of their number as treasurer, to the board.

2. If one of their number be elected secretary and one of their number be elected treasurer, may the board lawfully fix and pay a reasonable compensation to such members for the performance of their duties as such secretary and treasurer?”

Sections 3148 to 3153-7 G. C. are pertinent. This is the act relating to district tuberculosis hospitals. It originated in 100 O. L., p. 87 and was subsequently amended and supplemented in 103 O. L., 261, 494; 107 O. L., 498; and 108 O. L., 252.

Without tracing in detail its various changes and without quoting the whole act as it now exists, it is sufficient to say that in regard to that part which effects your questions, through its rather active career the act has retained substantially the same provisions.

Sections 3148 and 3140 authorizes the establishment of district tuberculosis hospitals, the district being composed of a certain number of counties. Section 3150 provides for the appointment, term and tenure of the trustees for such hospital. They are to be appointed by the joint board of county commissioners comprising the district.

Section 3153 (107 O. L. 488), relating to the powers and duties of such trustees, in part provides that the board of trustees shall “appoint a suitable person medical superintendent of the hospital, who shall not be removed except for cause, and, upon the recommendation of the superintendent, such nurses and other employes as may be necessary for the proper conduct of the hospital. The trustees shall fix the compensation of the medical superintendent and other employes.”

There is no specific mention of or a provision for a secretary for the board of trustees. If there be any express authority at all for their employment, as such, it must be under that part of section 3153, quoted above, viz., as one of the “other employes as may be necessary for the proper conduct of the hospital.” It may be noted that the section says such trustees shall serve without compensation, but that their necessary expenses may be paid.

The sections creating the board and defining its duties, however, vest the board

with the general management and control of such hospital. These sections carry with them the implied power to do such things as are necessary to carry into effect the expressly granted powers. In this connection it must be apparent that the orderly transaction of its business may require the services of a secretary. For illustration, a record of the meetings of the board should be kept; its financial transactions should be recorded and evidenced in such a manner that the board may be intelligently advised of the financial condition of the hospital and be able to account for the funds intrusted to it; and the employment of such clerical assistants may be regarded as "necessary for the proper conduct of the hospital," as provided in section 3153 G. C.

It is noted that your first question is whether such trustees may lawfully elect one of their number as secretary or treasurer to the board. Enough has been said to indicate the extent of the board's power in the matter of employment. This term necessarily presupposes the payment of compensation, but your first question refers to the power to "elect" one of the members of the board to either of these positions.

While there is no express authority to elect or otherwise select or appoint any employe as secretary or treasurer, it is believed that there is no legal inhibition against the board electing one of their own members to either of these positions or offices. However, this must be understood to be subject to two qualifications:

1. Such member or members so elected may not be clothed with power or authority from the board which will in any way lessen their responsibility or relieve them of any duty or obligation imposed upon them by statute. An illustration of what is meant in this regard may be seen by consideration of section 3152-1 G. C. This section in part provides that taxes levied by the county commissioners when collected shall—

"be paid over to the trustees * * * upon the warrant of the county auditor * * * and the board of trustees shall receipt therefor and deposit said funds to its credit in a bank * * * and thereupon said funds may be disbursed by said board of trustees * * * and accounted for as provided in the foregoing sections. Each trustee shall give bond for the faithful performance of his duties in such sum as may be fixed by the joint board of commissioners, * * *."

This section imposes certain duties upon the trustees which they may not legally delegate to a secretary or treasurer. So that the election of one of the members of the trustees as a secretary or treasurer can not clothe such treasurer or secretary with any independent power or responsibility.

2. While such trustees may elect one of their members as such clerk or treasurer, it must be borne in mind that they can pay him no compensation as such secretary or treasurer.

In Opinions of the Attorney-General for 1918, Vol. 2, pages 1676 and 1677, the Attorney-General, passing upon a similar question, quoted with approval from 23 Am. & Eng. Ency. of Law, page 348, as follows:

"On the ground of public policy, it has been held that the person or a member of the collecting body invested with the appointing power, can not be appointed."

Other authorities may be cited, but it is deemed sufficient to state that in the opinion of this department this correctly states the rule in Ohio.

To this may be added the rule against holding incompatible public offices and employments, found in *State ex rel. vs. Gebert*, 12 O. C. C. (n. s.) 275, as follows:

"Offices are considered incompatible when one is subordinate to, or in

any way a check upon, the other; or when it is physically imp ossible for one person to discharge the duties of both."

With the principles above stated then, your first question is answered affirmatively and your second question is answered in the negative.

Respectfully,

JOHN G. PRICE,
Attorney-General.

984.

BOARD OF EDUCATION—MAY CONTRACT WITH BOARD OF ANOTHER DISTRICT FOR ADMISSION OF ITS PUPILS INTO ONE OR MORE SCHOOLS—TUITION—HOW FIXED—WHEN ATTENDANCE AND TUITION DETERMINED BY CONTRACT, PROVISIONS OF SECTIONS 7736 AND 7747 G. C. NOT APPLICABLE—WHERE AMOUNT OF TUITION VARIES OR WHERE CHANGE IS DESIRED IN CONTRACT AS TO TUITION—WHERE NO CONTRACT AS TO TUITION OF PUPILS ENTERED INTO, THEN PUPIL CAN SELECT HIGH SCHOOL.

1. *Under the provisions of section 7734 G. C. the board of education of a school district may lawfully contract with the board of education of another district or districts for the admission of its pupils into one or more of the schools of such other districts and the amount of tuition for attendance of pupils may be fixed by the terms of the contract agreed upon by the boards of education of the several districts.*

2. *Where the attendance and amount of tuition are determined by the terms of a contract made between the boards of education of such districts, the provisions of section 7736 G. C. and section 7747 G. C. are not applicable. There is no requirement in law that the amount of tuition paid to one foreign board of education need be exactly the same amount paid to another board of education where a contract is had with more than one board.*

3. *Where a board of education enters into a contract or contracts with other boards of education for the tutoring of its pupils, and the schedule of pay for such tuition is later desired to be changed, a new contract or contracts should be prepared and agreed upon, for the reason that the limit of the liability resting upon a board of education to pay a pupil's tuition is the maximum amount named in any of the board's tuition contract. In cases where no agreement as to paying the tuition of pupils is entered into, the school to be attended by a pupil eligible to high school can be selected by the pupil holding a diploma.*

COLUMBUS, OHIO, February 3, 1920.

HON. LOUIS H. CAFELLE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the question as to whether the North College Hill board of education can pay an amount to the Cincinnati board of education that is equal to the amount now being paid to the Mt. Healthy board of education for the tutoring of high school pupils of the North College Hill school district. You indicate there are several of the pupils residing in the North College Hill village school district who desire to attend the Cincinnati high school rather than the high school at Mt. Healthy, and the board of education of the North College Hill school district desires to know whether they would be authorized to pay fifty dollars per pupil per school year to the Cincinnati