

1059.

NURSE—MEMBER DISTRICT BOARD OF HEALTH MAY VOTE FOR
AND PARTICIPATE IN MAKING OF CONTRACT OF EMPLOYMENT
WITH DAUGHTER AS PUBLIC HEALTH NURSE.

SYLLABUS:

A member of the district board of health of a general health district is not prohibited from voting for or participating in the making of a contract of employment with his daughter as public health nurse.

COLUMBUS, OHIO, July 22, 1933.

HON. GEORGE W. McDOWELL, *Prosecuting Attorney, Hillsboro, Ohio.*

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

“May I request your official opinion on the following:

A. and B., qualified nurses have filed application with the local district Board of Health for position as public health nurse. A. is the daughter of C. who is a member of the District Board of Health. Two members of the board are in favor of appointing B. as public nurse, while the three other members including C. who is the father of A. are in favor of the appointment of A.

Can A. be legally appointed as public health nurse in this county where the required majority of the board necessitates the vote of her father? In other words can a member of the Board of Health vote for the appointment of his daughter as public health nurse?”

It is assumed for the purpose of this opinion that the daughter of one of the members of the district board of health, who is being considered by the board of such general health district for public health nurse, is emancipated and the question of the parent being entitled to the earnings of a minor is not involved.

Sections 1261-16 to 1261-43, and sections 4404 to 4466, General Code, provide for the establishment of health districts and their administration by boards of health. Section 1261-22, General Code, provides as follows:

“In any general health district the district board of health may upon the recommendation of the health commissioner appoint for whole or part time service a public health nurse and a clerk and such additional public health nurses, physicians and other persons, as may be necessary for the proper conduct of its work. Such number of public health nurses may be employed as is necessary to provide adequate public health nursing services to all parts of the district. * * *”

There is no express provision in the statutes which excludes a daughter of a member of the district board of health from such appointment, nor is there any provision in the General Code prohibiting a member of the district board of health of such general health district from voting for the appointment of his daughter as public health nurse.

In an opinion of my predecessor, Opinions of the Attorney General for 1932, No. 4635, the syllabus states:

“A member of a board of education is not prohibited by section 12932 or by section 4757 of the General Code, from voting for or participating in the making of a contract of employment with his or her father, brother, mother or sister for any position other than that of a teacher or instructor.”

Section 12932, General Code, applies only to boards of education. Section 12932, General Code, prohibits a member of a board of education from voting for the hiring of his daughter as a teacher or instructor in a public school. There is no similar penal section with regard to members of a district board of health of a general health district.

There being no express provisions in the sections of the General Code relating to boards of health which prohibit a member of the district board of health of a general health district from voting for, or participating in the making of a contract of employment with his daughter as public health nurse, reference must be made to the general laws which prohibit a public officer from having an interest in a public contract. Sections 12910 and 12911, General Code, prohibiting persons holding an office of trust either by appointment or election, from having an interest in certain specified contracts, do not include employment contracts.

These statutes are penal in their nature and must be strictly construed, and nothing can be read into the statutes which is not clearly within their terms. *Board of Education vs. Boal*, 104 O. S. 482. Since sections 12910 and 12911, General Code, do not include employment contracts, such contracts cannot be read into them.

For your information, I also call your attention to an opinion of my predecessor in the Opinions of the Attorney General for 1929, Volume 2, page 1072, the syllabus of which reads:

“In appointing public health nurses under the provisions of section 1261-22, General Code, a district board of health is subject to the same limitations in making the selection as are set forth in section 4411, General Code, relative to the appointment of public health nurses by a municipal board of health, and accordingly must employ registered nurses, unless registered nurses are not available, in which event, other suitable persons may be so appointed.”

Specifically answering your question, I am of the opinion that, a member of the district board of health of a general health district is not prohibited from voting for or participating in the making of a contract of employment with his daughter as public health nurse.

Respectfully,
JOHN W. BRICKER,
Attorney General.