

2333.

COUNTY HOME—COUNTY COMMISSIONERS MAY APPOINT WOMAN
AS SUPERINTENDENT.

SYLLABUS:

County commissioners by authority of section 2523, General Code, may appoint a woman as Superintendent of the County Home.

COLUMBUS, OHIO, February 28, 1934.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 2523 of the General Code provides that ‘The county commissioners shall appoint a superintendent’, and further provides that the superintendent shall live in the infirmary and shall perform such duties as the commissioners may impose upon *him*.

Assuming that a *woman* has taken the civil service examination and has met all other requirements, can she be appointed to the position as superintendent of a county home?”

Section 2522, General Code, reads in part as follows:

“The board of county commissioners shall make all contracts for new buildings and for additions to and repairs of existing buildings necessary for the county infirmary and shall prescribe such rules and regulations as it deems proper for its management and good government, and to promote sobriety, morality and industry among inmates. The superintendent may employ a matron and such labor from time to time, at rates of wages to be fixed by the county commissioners, as may not be found available on the part of the inmates of the institution.”

Section 2523, General Code, referred to in your letter, reads as follows:

“The county commissioners shall appoint a superintendent, who shall reside in some apartment of the infirmary or other buildings contiguous thereto, and shall receive such compensation for his services as they may determine. The superintendent and matron shall each be allowed their actual necessary expenses incurred in the discharge of their official duties. The superintendent shall perform such duties as the commissioners impose upon him, and be governed in all respects by their rules and regulations. He shall not be removed by them except for good and sufficient cause. The commissioners may by resolution provide for the appointment by the superintendent of an assistant superintendent who shall perform such duties at the infirmary or elsewhere as may be prescribed by such superintendent. The commissioners shall not appoint one of their own number superintendent, nor shall any commissioner be eligible to any other office in the infirmary or receive any compensation as physician, or otherwise, directly or indirectly, wherein the appointing power is vested in such board.”

It is true that in these sections, as well as in other sections of the General Code dealing with the duties of the Superintendent of the County Home, the words "his" and "he" appear and that the feminine pronoun is not used. However, it is a common practice to use the masculine pronoun in drawing up legislation where the intent of the legislature is clearly to include the feminine pronoun. The legislature has recognized this practice in the enactment of section 27, General Code, which section appears under the title of "General Provisions."

This section reads as follows:

"In the interpretation of parts first and second, unless the context shows that another sense was intended, the word 'bond' includes an 'undertaking', and the word 'undertaking' includes a 'bond'; 'and' may be read 'or', and 'or' read 'and', if the sense requires it; words of the present include a future tense, in the masculine, include the feminine and neuter genders, and in the plural include the singular and in the singular include the plural number; but this enumeration shall not be construed to require a strict construction of other words in such parts, or in this code."

Section 2523, General Code, *supra*, was placed in Part First by the legislature in 1910 when the legislature passed the General Code of Ohio. While this statute has since been amended several times, it remains substantially the same as it was in 1910.

In a recent opinion rendered February 2, 1934, being Opinion No. 2252, I was called to pass upon the question of whether or not women could be employed in state liquor stores when the statute makes use of the masculine pronoun. From the opinion I quote the following language:

"It has been suggested that the legislature by the use of the word 'he' in the sentence quoted above, intended thereby to limit the employment of persons in and about the handling of liquor, to men only. The masculine pronoun 'he' is often used in ordinary conversation and in written instruments of various kinds without any intent other than that the word should include all persons whether male or female coming within the class referred to, I am of the opinion that if the legislature had intended when fixing a minimum age limit for employes who handle liquor, to limit the employment to men only, it would have done so in more explicit language, especially in view of the provisions of Section 27 of the General Code of Ohio, which provides that in the interpretation of Parts First and Second of the General Code, words used in the masculine include the feminine, unless the context shows that another sense is intended. The provisions of the Liquor Control Act clearly are a part of 'Part II Civil' of the General Code. This is further manifest by the Code numbers of a part of the act which numbers were indicated by the legislature itself."

Without further extending this discussion, it is my opinion, in specific answer to your question, that county commissioners by authority of section 2523, General Code, may appoint a woman as Superintendent of the County Home.

Respectfully,

JOHN W. BRICKER,
Attorney General.