

Note from the Attorney General's Office:

1942 Op. Att'y Gen. No. 42-4966 was overruled by 1992 Op. Att'y Gen. No. 1992-013.

4966

HEALTH DISTRICT BOARD — MEMBER MUST BE RESIDENT
OF SUCH DISTRICT — SECTION 1261-16 ET SEQ., G.C.

SYLLABUS:

A member of a general health district board established under the provisions of Section 1261-16, et seq., General Code, must be a resident of such district.

Columbus, Ohio, March 28, 1942.

Hon. George E. Gerhardt, Prosecuting Attorney, Pickaway County,
Circleville, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“The following opinion has been requested of my office:

“The General Health District of Pickaway County includes all of Pickaway County except the City of Circleville.

“They have a member of their board who was appointed in May, 1937 and who does not reside within the boundaries of this district. He lives in Laurelville, Ohio, Hocking County. Laurelville is his permanent residence. He was living there when he was appointed to the aforesaid office and is still living there. His term will expire May 4, 1942. Is this man entitled to hold the office as a member of the Board of Health of the General Health District of Pickaway County?

“He claims Pickaway County as his residence because he says that he votes in Tarlton, Pickaway County, Ohio. Has he the legal right to vote in Pickaway County?

“James E. Bauman, Legal Division, State Department of Health quoted the following Attorney General’s Opinion, No. 2603, given November 28, 1930, but I do not feel that this answers our inquiry as to the above.”

General health districts are established under the authority of Section 1261-16, et seq. General Code. Section 1261-17, General Code, provides:

“In each general health district, except in a district formed

by the union of a general health district and a city health district, there shall be a district board of health consisting of five members to be appointed as hereinafter provided and as provided in section 4406 of the General Code. Each member of the board of health of a general health district shall be paid three dollars a day and mileage at the rate of five cents a mile to and from the place of meeting to cover the actual and necessary expenses incurred during his attendance upon any meeting of the board not exceeding twelve meetings in any one year. A vacancy in the membership of the board of health of a general health district shall be filled in like manner as an original appointment and shall be for the unexpired term. Provided, that when a vacancy shall occur more than ninety days prior to the annual meeting of the district advisory council the remaining members of the district board of health may select a resident of the district to fill such vacancy until such meeting. A majority of the members of the district board of health shall constitute a quorum."

Section 1261-18, General Code, provides in part:

"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."

Section 1261-40a, General Code, contains the following provision:

"Vacancies in boards of health in general health districts caused by non-residence shall be filled as provided by this act for other vacancies."

In Opinion No. 2603 of the Opinions of the Attorney General for the year 1930, Vol. III, page 1718, the then Attorney General discussed the first question which you have presented. Based on the foregoing sections, the then Attorney General ruled as disclosed by the syllabus:

"A member of a general health district board must reside within the boundaries of said district."

It was pointed out in that opinion that there was no express statutory provision requiring that a member of a general health district board be a resident of such district. However, it was emphasized that Sections 1261-16, General Code and 1261-40a, General Code, definitely imply that such residence is required, inasmuch as the former section provides that the board must be appointed with due regard to the equal representation of all parts of the district, and the latter section states in

what manner vacancies in such board caused by non-residence shall be filled.

I have reviewed the reasoning of the 1930 Opinion, supra, and am in full accord with the conclusion announced therein. I am, therefore, of the opinion that a member of a board of a general health district must be a resident of such district.

Coming now to your second question, Section 4785-31, General Code, prescribes certain rules for the guidance of registrars and judges of elections in determining the residence of a person offering to register or vote. This section provides in part:

“a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

“b. A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

“c. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.”

The question as to whether a person is a resident of a particular county and entitled to vote therein is a question of fact and may be determined from an application of the foregoing rules to the given situation. You have not related the circumstances of the instant case and therefore it is impossible for me to express an opinion thereon. However, you have resolved this question of fact by stating that the residence of the individual here concerned is in Hocking County. Consequently, this question requires no further discussion.

Respectfully,

THOMAS J. HERBERT
Attorney General.