

This brings us to the question of the meaning of the term "seed merchants" as used in section 5805-6.

Webster defines a merchant as follows:

"One who traffics or carries on a trade, especially on a large scale; one who buys goods to sell again; any one who is engaged in the purchase and sale of goods; a trafficker; a trader."

Adapting this common acceptation of the word "merchant" to the term "seed merchant," it may be observed ordinarily that seed merchant is one who trafficks or carries on a trade in seeds; one who buys agricultural seeds to sell again; one who is engaged in the purchase or sale of such seeds, and such a society or person buying or selling seeds, it would seem, must be deemed a seed merchant unless it can be said that the legislature intended by this term to include only those who are engaged exclusively in the seed business or whose seed business is with the public generally instead of being limited to the members of the association. To hold that such a seed merchant must be thus exclusively engaged and deal with all the public to come within the meaning of this term, as used here, would be to impute to the legislature an intention to use this term in a special sense. The proper rule of construction in such cases, as stated in *State ex rel. vs. Bish*, 12 O. N. P. (n. s.) 369, is that words and phrases used in statutes are to be taken in their plain, ordinary sense unless the statute clearly indicates that they were used in a special or restricted sense, or unless they are technical words or phrases, in which case they are construed according to their technical meaning.

In the section under discussion there is nothing to indicate that the legislature used this term in a special sense, and consistent with the authorities above referred to, it is concluded that where an association purchases and sells agricultural seeds to its members, such association is a seed merchant within the meaning of subsection b, section 5805-6 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.

981.

BOARD OF HEALTH—WHERE HEALTH COMMISSIONER ATTENDS
CONVENTION OF AMERICAN HEALTH ASSOCIATION AT NEW
ORLEANS—NO STATUTORY AUTHORITY TO PAY EXPENSES FROM
PUBLIC FUNDS.

There is no statutory authority for using public funds to pay expenses incurred by health commissioner of Canton board of health in attending the convention of the American health association held at New Orleans, in October, 1919.

COLUMBUS, OHIO, February 3, 1920.

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date inquiring whether expenses incurred by the health commissioner of the Canton board of health in attending the convention of the American public health association at New Orleans on October 19, 1919, are a legal charge against public funds, was duly received.

The facts, as I gather them from the correspondence and papers submitted, are as follows:

The commissioners attended the convention under authority of a certain resolution adopted by the board, reading as follows:

“Moved by member Brandt and seconded by member Staley that on account of the probable recurrence of influenza this fall, that the health commissioner be delegated to attend the convention of the American health association of New Orleans, La., October 27th to 31st, at which meeting a full session will be devoted to that subject.”

A bill of expenses covering disbursements on account of transportation, Pullman berths and seats, and hotel and meals was presented to the city auditor, and payment refused. Thereupon the matter was referred to the city solicitor, who rendered an opinion addressed to the city auditor in which the conclusion was reached that the expenses were a legal obligation of the city and should be paid.

The city solicitor, after referring to previous opinions of the attorney-general in which claims of a kindred character were disapproved, undertook to draw a distinction between the facts involved in those opinions and those now presented for consideration, as follows:

“It must be remembered that this is not a case of the ordinary attendance at a convention such as is spoken of in the opinions of the attorney-general, but is for a definite purpose of procuring special knowledge as to the means, etc., of preventing an epidemic; and it is my opinion that under the broad powers of the board of health, such, for example, as G. C. section 4404 and following, and especially G. C. sections 4450 and 4451, the incurring of the expense by the board, as in this case, is a legitimate expenditure, and that the same should be paid.”

In opinion No. 85 of the Attorney-General, addressed to your department under date of March 1, 1919, this department had occasion to examine and review the authorities on the subject of expenses incurred by public officials in attending conventions, and in that opinion it was pointed out that in every case where the claim of a public officer for expenses incurred in the discharge of official duty was allowed, the decision was based upon the ground that payment was authorized by statute, and that in every case where the claim was refused, the decision was reached because there was no statute authorizing its allowance. It was also stated in that opinion that the policy of the state against the allowance of claims of public officers for expenses incurred in the discharge of official duties, except in cases where the incurring and payment there of was clearly authorized by statute, was most forcibly shown by the fact that the legislature has, from time to time and in a great number of cases, expressly provided for the payment of traveling and other expenses of certain officers, thereby negating the right to the payment of such expenses except in cases provided for. Numerous statutes enacted at various times and affecting many boards and officers were cited and referred to in that opinion for the purpose of showing the legislative policy on the subject over a long period of time.

It was also pointed out in that opinion that the General Assembly has specifically legislated on the subject of meetings and conventions, and that the statutes on that subject disclose a legislative policy or intent to deny the right of public officers to attend meetings and conventions at public expense, unless clearly authorized, and several statutes on the subject were referred to.

The rule applicable to claims of public officials to the payment of expenses in-

curred in the performance of official duty is stated in *Richardson vs. State*, 66 O. S. 108, at page 111, as follows:

“To make such expenses an additional burden on the public funds would require a plain and unequivocal provision of the statute. An intent to do so will not be implied.”

No statute has been found imposing a duty upon or authorizing local health officers to attend conventions of health associations outside the state or making the expense of such attendance a burden on the public funds, nor is there any authority conferred upon local boards of health to direct such attendance. If it had been intended to permit the expenditure of public funds for such purpose, it is but reasonable to presume that the legislature would have spoken on the subject, as it has done in the numerous instances referred to in opinion No. 85, *supra*. The doctrine of that opinion is adhered to, and requires a negative answer to your inquiry.

Section 4404 G. C. referred to in the letter of the city solicitor, amended 108 O. L. 247, and in force at the time the expenses involved in this inquiry were incurred, relates solely to the establishment of a board of health by the municipal council, and contains no authority, express or implied, authorizing the board of health to send delegates to conventions at public expense, or making the expense of such attendance a charge against public funds. And while sections 4450 and 4451 G. C., also referred to in the opinion of the city solicitor, confer authority upon the city council to borrow money to defray necessary expenses incurred in preventing the spread of dangerous communicable diseases, and also authorize the city council to pass the necessary appropriation ordinances covering expenses incurred by the board of health under the provisions of the chapter of which those sections are a part, yet an examination of all the statutes having any relevancy to the subject will disclose, as already stated, that no duty is imposed or authority conferred upon local boards of health, or their appointees or assistants, with respect to attending conventions outside the state at public expense.

You are therefore advised that the expenses incurred by the Canton health commissioner in attending the convention of the American Public Health Association at New Orleans, are not a legal charge against public funds.

Respectfully,

JOHN G. PRICE,

Attorney-General.

982.

TOLEDO CHARTER—COUNCIL MAY DISCONTINUE DIVISION “D” OF ASSESSMENTS AND LICENSES IN DEPARTMENT OF FINANCE AND TRANSFER DUTIES TO CLERK OF COUNCIL—DIRECTOR OF FINANCE MAY NOT DELEGATE SUCH DUTIES TO CLERK OF COUNCIL OR TO ANOTHER DEPARTMENT.

1. *Under section 102 and 34 of the Toledo charter (Volume 1, Supplement to the General Code, page 1178) the council may legally discontinue Division “D” of assessments and licenses in the Department of Finance and transfer the duties thereof to the clerk of council.*