

he shall be a physician and devote his time to said duties as fixed by contract. There is no qualification that he shall be a resident of the health district.

Section 4408, General Code, provides:

"In any city health district, the board of health or person or persons performing the duties of a board of health shall appoint for whole or part time service a health commissioner and may appoint such public health nurses, clerks, physicians, and other persons as they deem necessary."

This section relates to a city health district and is similar to section 1261-19, supra.

A careful survey of all statutes relating to both general and city health districts reveal that there is no statutory inhibition against the same person holding both offices.

In the case of *State ex rel. vs. Gebert*, 12 Cir. Ct. (n. s.) 274, it was held:

"Offices are considered incompatible when one is subordinate to or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both."

As the health commissioner in both city and general health districts is limited in jurisdiction to his respective district, it is impossible that either could be "subordinate to, or in any way a check upon the other."

As you have stated that both districts have selected the same physician on a part time basis, it would not be physically impossible for one person to discharge the duties of both offices unless the district last contracting with said physician would contract for more of the time of the physician than was remaining to be contracted for.

It is therefore my opinion that a physician may be employed by two or more health districts as health commissioner, on a part time basis, when it is physically possible for one to do so.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

1426.

MUNICIPALITY—AUTHORITY TO ISSUE BONDS UNDER ITEM 3 OF SECTION 3939 G. C. DISCUSSED.

*SYLLABUS:*

*A municipality may not under item 3 of section 3939 G. C. issue bonds to provide funds for operation of a garbage and refuse collection department.*

COLUMBUS, OHIO, May 5, 1924.

Attention: Mr. Andrew H. Foster.

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

GENTLEMEN:—I am in receipt of your recent communication as follows:

"Section 3939, General Code, Item 3, authorizes council of municipal corporations to issue bonds for sanitary purposes and for erecting a crematory providing other means for disposing of garbage and refuse matter etc.

The Bureau is in receipt of a letter from Mr. Henry B. Street, legal counsel for the village of Wyoming, pertinent part of which is as follows:

"The Village of Wyoming is desirous of entering into an arrangement whereby it may collect and dispose of garbage and ashes from the citizens of said village and to pay the costs and expenses of the operation of said department by assessing taxes therefor. Pending, however, the fixing of such charge in the budget of said village, funds must be available so that on August 1st of this year, when the municipality desires to start the collection of garbage, it may purchase the necessary equipment and pay for the cost of maintaining this branch of municipal service.

I have been requested, as solicitor, to prepare the necessary legislation for the issuance of bonds to provide funds for this purpose, and notice by General Code section 3939, paragraph 3, that bonds of municipalities may be issued for "sanitary purposes and for erecting a crematory or providing other means of disposing of garbage and refuse matter \* \* \*."

Will you be so kind as to give me an opinion as to whether or not under this paragraph of section 3939, the Village of Wyoming may issue bonds for purchasing the necessary equipment and providing funds for operating such department until there can be a tax levy made to cover such operation."

Question :

May a city or village issue bonds for the purpose of operating a garbage and refuse collecting department as a sanitary measure?"

The question asked by you can be restated as follows :

Do the words in section 3939 G. C. "for sanitary purposes" authorize the issuing of bonds, the principal sum of which includes in addition to the amount for equipment the necessary funds for the operation of a garbage refuse collection department?

Section 3939 G. C., found in 110 O. L., page 373, as far as pertinent, provides :

"When it deems it necessary, the council of a municipal corporation, by an affirmative vote of not less than two-thirds of the members elected or appointed thereto, by ordinance, may issue and sell bonds in such amounts and denominations, for such period of time, and at such rate of interest, not exceeding six per cent per annum, as said council may determine and in the manner provided by law, for any of the following specific purposes: \* \* \*

3. For sanitary purposes and for erecting a crematory or providing other means of disposing of garbage and refuse matter, and for erecting public toilet and public comfort stations."

A careful examination of section 3939 G. C. reveals that each of the other twenty-seven specific purposes set out for which a municipal corporation may issue bonds, is for acquisition or construction of a property, asset or improvement which has an estimated life or usefulness of not less than five years.

Section 2295-7 G. C., found in 109 O. L., page 336, is as follows:

"No county, school district, township, municipality, including charter municipalities or other political subdivision shall, with the exceptions hereinafter named, create or incur any indebtedness for current operating expense. The acquisition or construction of any property, asset or improvement with an estimated life or usefulness of less than five years shall be deemed current expense. This prohibition shall not apply to borrowing as provided by law in anticipation of collection of special assessments or in anticipation of special assessments or current revenues or for defraying the expenses of an extraordinary epidemic of disease or emergency expenses made necessary by sudden casualty which could not have reasonably been foreseen or for deficiencies created by enjoined taxes as provided in section 5659-1 of the General Code or for paying final judgments upon non-contractual obligations as provided in section 4 thereof. The estimate of the life of the property, asset or improvement proposed to be acquired or constructed from the proceeds of any bonds, shall be made in any case by the fiscal officer of the subdivision and certified by him to the bond issuing authority and shall be binding upon such authority."

The exceptions from this section are specifically named in the same section and refer to borrowing money in anticipation of special assessments and current revenues.

The funds necessary to operate a garbage and refuse collection department would be current operating expense, and the issuing of bonds for such purpose is prohibited by section 2295-7 G. C.

Section 2295-7 G. C. is not repealed by section 3939 G. C. and repeals by implication are not favored unless that conflicting statutes cannot be harmonized.

The above section is a part of the Griswold Act, which act as shown by its title was "to prohibit the creation or incurring of indebtedness of political subdivisions of the state for current expense \* \* \*."

By interpreting the words "for sanitary purposes" to mean the acquisition or construction of any property, asset or improvement for such purpose, it is possible to harmonize sections 3939 and 2295-7 G. C.

It is therefore my opinion that a municipality may not under item 3 of section 3939 G. C. issue bonds to provide funds for operation of a garbage and refuse collection department.

Respectfully,

C. C. CRABBE,

*Attorney General.*