

Opinion No. 110.

Nurses—Board of Examiners for
Nurses—Secretary of
Board.

HELD: Secretary of Board of Examiners for Nurses, does not come within the provisions of Chapter 5, Laws of 1937.

Secretary of Board of Examiners for Nurses cannot act as treasurer of the Board.

June 2, 1937.

The Board of Examiners for Nurses
Helena, Montana

Mesdames:

The following questions have been submitted to this office for consideration and an opinion:

1. Does a nurse elected by the Board of Examiners as secretary have to be approved by the Governor under Chapter 5 of the Session Laws of the 25th legislative assembly, of 1937?

2. May the secretary of the nurses examining board also act as treasurer of the board and sign checks alone?

3. Was there any amendment made to the nurses examining board statutes at the last legislative session?

Answering the questions in order:

1. Chapter 5 of the 25th legislative assembly, 1937, provides among other things for the written approval of the governor for appointment of assistants, deputies, etc. The provisions of this Act has one exception which reads as follows:

“* * * that the provisions of this act shall not apply to nor affect the assistants, deputies, agents, attorneys, administrators, engineers, experts, clerks, accountants, stenographers, or other executive attaches whose term and tenure of office, duties and compensation are now fixed by law; * * *”

We say that the Board of Examiners for Nurses comes within the exception in that it is a regular organized board, organized under provisions of

the statute with duties to perform as set up by statute, among which duties are the election of its own officers and to provide for the compensation of such officers. This, then, being a duly organized board under statute has full charge and control of the election of its secretary, and Section 3206, Revised Codes of Montana, 1935, provides that the board shall elect one of their number as president, and shall elect one of their number as treasurer and shall also elect a secretary who shall not be a member of the board.

“Election” is defined to be, “the choice which several persons collectively make of a person to fill an office or place.” The term election in its constitutional sense and meaning is used to designate a selection by popular voice of a District, County, Town or City, or by some organized body,” in contra-distinction to the appointment by some single person or officer.

Police Com’rs vs. City of Louisville, 66 Ky. 597, 602;

Rogers vs. Jacob, 11 S. W. 513, (Ky.);

Speed v. Crawford, 70 Ky. 297, 309;

McGruder vs. Swan, 25 Md. 173, 213;

State vs. Harrison (Ind.), 16 N. E. 384, 388.

It is particularly a choice of means to accomplish a given end, the choice of a person or persons for office of any kind by the voting of a body of qualified or authorized electors.

State vs. Hirsch, 24 N. E. 1062, 1063 (Ind.).

Election signifies the act of choosing where several participate in the selection, whereas appointment relates to the bestowal of the office upon the person selected, whether choosing be the act of one or many.

Vol. 3, Words & Phrases 1st ed. 2329, 2330;

Conger vs. Gilmore, 32 Cal. 75, 78;

State vs. Compson, 54 P. 349, 351 (Ore.);

State vs. Williams, 58 P. 476, 477 (Kan.);

Wickersham vs. Brittan, 28 P. 792, 793 (Cal.).

In *Wickersham vs. Brittan*, 28 Pac. 792, 793, a distinction is made between the terms "elect" and "appoint" as follows:

"The term 'elect' is to select or choose by popular voice or vote as distinguished from 'appoint' which is by an individual,"

and further:

"Election is the selection of a person by the votes of an entire class." "No latitude of construction can justify the reading of 'elected' as the synonym of 'appointed.'"

The court in *State vs. Williams* (Kan.), 58 Pac. Reporter, 476, 477, said:

"In the popular sense, an 'election' is a choice which several persons collectively make of a person to fill an office or position, while an 'appointment' is a choice for such office or position by some single officer or person."

The distinction is also well illustrated in *State vs. Compson*, supra.

In short, this means to say that it is our opinion that the Governor has no jurisdiction over the secretary elected by the Board of Examiners for Nurses, and that his approval of such election is not within the purview of the legislative act of 1937.

2. The Board of Examiners for Nurses was established by an act of the 13th legislative session of 1913, at which time provision was made under Section 4 of the said act of 1913, that:

"The members of the Board shall immediately after their appointment meet at the City of Helena for the purpose of organizing said Board, and shall elect one of their number President, and shall elect one of their number Secretary, who shall also act as Treasurer of the Board."

This feature of the law was amended by the legislative session of 1919, Chapter 117, Page 246, Section 2, which reads as follows:

"The members of the Board shall immediately after their appointment meet at the City of Helena for the purpose of organizing said Board,

and shall elect one of their number President, and shall elect one of their number as Treasurer, and shall also elect a Secretary, who shall not be a member of the Board."

The law, then, as amended in 1919 is the law of today. Which means to say that the secretary of the nurses examining board cannot act as treasurer of the board and would have nothing to do with the signing of checks, since the statute provides (3206 Revised Codes of Montana, 1935) that the Treasurer must be a member of the Board, and that all expenses are to be paid from funds in the hands of the Treasurer of the Board. The said section, 3206, further provides that the Secretary shall not be a member of the Board, and there is no provision that the Secretary may act as Treasurer. In view of the amendment of the Session Laws of 1919, Section 2, Page 246, it certainly was not contemplated that the office of Secretary and Treasurer should be united in one person.

3. Answering question 3, I would say that there has been no amendment passed during the legislative session of 1937 respecting the statutes pertaining to The Board of Examiners for Nurses.