



REQUEST FOR BOARD ACTION

ITEM NO. 17.

DATE OF MEETING: December 6, 2010

REQUESTED BY: Commissioner Brown

SHORT TITLE: Discussion of Appointment to Pender County Board of Health

BACKGROUND: At the November 15 meeting the Board voted to appoint Dr. Shelby Chadwick to the Pender County Board of Health. Subsequently, it was learned Dr. Chadwick is the mother of Board of Health member Heather O'Brien. This relationship was not disclosed on the application, or during consideration of the appointment. Commissioner Brown is concerned for the conflicts or issues having two immediate family members serving on the same board, and would like Board discussion regarding the appointment and to take possible action as a result.

N.C.G.S 130A-35 (g) provides a member of the Board of Health may be removed from office by the county board of commissioners. The statute requires the member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond. A copy of the statute is attached.

SPECIFIC ACTION REQUESTED: Discussion of the appointment by the Board, followed by consideration of action, including possible consideration of a resolution of intent to remove Dr. Chadwick from the appointment as provided in N.C.G.S 130A-35 (g).

COUNTY MANAGER'S RECOMMENDATION

Appointments to and removal from the Board of Health is at the discretion of the Board of Commissioners, pursuant to GS 130A-35.

PA
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby confirms an intent to remove Dr. Chadwick from appointment to the Pender County Board of Health pursuant to N.C.G.S. 130A-35 (g)(2) and (5). The Chairman/County Manager is instructed to provide a written notice of the basis for the intended removal to Dr. Chadwick to provide an opportunity for a response on or before January 3, 2011. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: ___ Brown ___ Rivenbark ___ Tate ___ Ward ___ Williams ___

Chairman Date

ATTEST Date

members of the Commission. (1973, c. 476, s. 127; 1989, c. 727, ss. 175, 178; 1993, c. 513, s. 6.)

§§ 130A-33.1 through 130A-33.29: Reserved for future codification purposes.

ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-34. Provision of local public health services.

(a) A county shall provide public health services.

(b) A county shall operate a county health department, establish a consolidated human services agency pursuant to G.S. 153A-77, participate in a district health department, or contract with the State for the provision of public health services. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1983, c. 891, s. 2; 1995 (Reg. Sess., 1996), c. 690, s. 13.)

Local Modification to Former § 130-13 and Former Similar Provisions. — Caldwell: 1939, c. 366; Cumberland: 1935, c. 159; 1943, c. 91; Edgecombe: 1969, c. 422; Moore: 1943, c. 326, s. 2; Nash: 1949, c. 6, s. 1.

CASE NOTES

A board of health acts within its rule making powers when it enacts a regulation which (1) is related to the promotion or protection of health, (2) is reasonable in light of the health risk addressed, (3) is not violative of any law or constitutional provision, (4) is not discriminatory, and (5) does not make distinctions based upon policy concerns traditionally reserved for legislative bodies. *City of Roanoke Rapids v. Peedin*, 124 N.C. App. 578, 478 S.E.2d 528 (1996).

Applied in *Gray v. Laws*, 51 F.3d 426 (4th Cir. 1995).

Stated in *Houck & Sons v. Transylvania County*, 852 F. Supp. 442 (W.D.N.C. 1993), *aff'd*, 36 F.3d 1092 (4th Cir. 1994).

§ 130A-35. County board of health; appointment; terms.

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner, one professional engineer, and three representatives of

the general public. All members shall be residents of the county. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for:

- (1) Commission of a felony or other crime involving moral turpitude;
- (2) Violation of a State law governing conflict of interest;
- (3) Violation of a written policy adopted by the county board of commissioners;
- (4) Habitual failure to attend meetings;
- (5) Conduct that tends to bring the office into disrepute; or
- (6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(h) A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners.