

LEGISLATIVE BILL 134

Approved by the Governor February 20, 1987

Introduced by Barrett, 39

AN ACT relating to hospitals; to amend sections 23-343.01, 23-343.04, 23-343.05, 23-343.12, 23-343.16, 23-343.17, and 23-343.38, Reissue Revised Statutes of Nebraska, 1943, and section 49-14,103.01, Revised Statutes Supplement, 1986; to provide for vacancies as prescribed; to define a term; to redefine a term; to prohibit directors and trustees of hospital districts from having an interest in certain contracts as prescribed; to eliminate provisions relating to the contracting of certain professional services; to eliminate certain existing provisions relating to interests in contracts; to eliminate penalties; to harmonize provisions; and to repeal the original sections, and also sections 23-343.09, 23-343.41, and 23-343.45, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 23-343.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.01. (1) When a county with a population of three thousand six hundred or more and less than two hundred thousand inhabitants or with an actual valuation of all taxable real and personal property, excluding intangible property, of twenty-eight million six hundred thousand dollars or more, shall establish ~~such~~ a facility or facilities as provided by section 23-343, the county board of the county shall proceed at once to appoint a board of trustees. Such board shall consist of three or five members, as fixed by the county board. All members of such board shall be residents of ~~said~~ such county. When such board is first established, one member shall be appointed for a term of two years, one for four years, and one for six years from the date they are appointed, if the county board provides for a three-member board. Otherwise one additional member shall be appointed for four years and one for six years. When the board is changed to a five-member board, the three members who are serving as

such trustees at the time of a change from a three-member to a five-member board shall each complete his or her respective term of office. The two additional members shall be appointed by the county board, one for a term of four years and one for a term of six years. Thereafter, as their terms expire, members shall be appointed for a term of six years.

(2) Except in any county having a population of more than three hundred thousand inhabitants, not over one member of ~~said the~~ board of trustees shall be from the city in which such facility or facilities are located. In any county having a population of more than three hundred thousand inhabitants, a minimum of one member of the board of trustees shall be a resident of the county and shall reside outside the corporate limits of the city in which such facility or facilities are located. In any county having a population of more than three hundred thousand inhabitants, if only one member of the board of trustees resides outside the corporate limits of the city in which the facility or facilities are located and the residence of such member is annexed by such city, he or she shall be allowed to complete his or her term of office but shall not be eligible for reappointment. The ~~said~~ trustees shall, within ten days after their appointment, qualify by taking the oath of county officers and by furnishing a bond in an amount to be fixed by the county board. They shall organize as a board of trustees by the election of one of their number as chairperson, one as secretary, and one as treasurer, except that in counties with two hundred thousand inhabitants or more, the county treasurer of the county in which such facility or facilities are located shall be the treasurer of the board of trustees. The treasurer shall receive and pay out all the money under the control of ~~said such~~ board as ordered by it, and shall report such expenditures and receipts to the county board on a monthly basis and as required by section 23-343.06. Such monthly report shall include a statement of the amount of currently outstanding registered warrants.

(3)(a) When a member or trustee is absent from three consecutive board meetings either regular or special without being excused by the remaining members of the board, his or her office shall become vacant, and a new member shall be appointed by the county board to fill the vacancy for the unexpired term of such member as provided by section 23-343-09 pursuant to subdivision (3)(b) of this section. Such vacancy shall become effective when the county board shall find that there is

such a vacancy or shall fill the same as provided in this subsection.

(b) Any member of such board may at any time be removed from office by the county board. Vacancies shall be filled in substantially the same manner as the original appointments are made. The person appointed to fill such a vacancy shall hold office for the unexpired term.

(4) In counties having a population of two hundred thousand inhabitants or more, the county board of such county having such facility or facilities, in lieu of appointing a board of trustees of such facility or facilities, may elect to serve as the board of trustees of such facility or facilities. If the county board makes such election, that county board shall assume all the duties and responsibilities of the board of trustees of such institution. Such election shall be evidenced by the adoption of a resolution by that county board.

Sec. 2. That section 23-343.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.04. The board of trustees of such facility or facilities as provided by section 23-343, shall have power to appoint, remove, and fix the compensation of a suitable administrator, superintendent or matron, or two or more of such officials, and necessary assistants and in general carry out the spirit and intent of sections 23-343 to ~~23-343-09~~ 23-343.08 in establishing and maintaining such facility or facilities.

Sec. 3. That section 23-343.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.05. The board of trustees of such facility or facilities as provided by section 23-343, shall have power to accept gifts, devise, and bequests of real and personal property to carry out the purposes for which such board was established and, to the extent of the powers conferred upon such board by sections 23-343 to ~~23-343-09~~ 23-343.08, to execute and carry out such conditions as may be annexed to any gift, devise, or bequest.

Sec. 4. That section 23-343.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.12. The provisions of sections 23-343.10 to 23-343.12 are intended to be cumulative to and not amendatory of sections 23-343 to ~~23-343-09~~

23-343.08.

Sec. 5. That section 23-343.16, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.16. (1) Whenever two or more counties shall establish an indigent hospital, or a home for aged or infirm persons, or a community hospital, or a mental health clinic, or a clinic or facility to combat mental retardation, or a public health center, or similar facilities required to protect the health and welfare of the people, as provided by section 23-343.15, the county board of each such county shall proceed immediately to appoint three members to serve on the board of trustees of such facility or facilities. When such board is first established, each county board shall appoint one member for a term of two years, one for four years, and one for six years from the date they are appointed. Thereafter, as their terms expire, members shall be appointed for a term of six years.

(2) Whenever the board provided for in subsection (1) of this section would consist of an even number of members, one additional member shall be appointed for a term of six years by the county board of the county having the greatest population as disclosed by the latest United States census.

(3) The board of trustees provided for in this section shall have the same powers, duties, obligations, and authority provided in sections 23-343.01 to 23-343-09 23-343.08.

Sec. 6. That section 23-343.17, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.17. The provisions of sections Sections 23-343 to 23-343-09; 23-343.08 shall apply to any such facility or facilities established pursuant to section 23-343.15. For purposes of sections 23-343.15 to 23-343.19, (1) whenever such sections: (1) Require require the making of any report to the county board, such report shall be made to the county board of each county concerned; (2) whenever such sections authorize or require the taking of any action by the county board, such action must shall be concurred in by the county board of each county concerned; and (3) whenever such sections provide for the submission of any question to the voters before any action may be taken, such question shall be submitted to the voters of each county concerned, and must shall be approved by a majority vote of the electors voting on such question in each such county.

Sec. 7. That section 23-343.38, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.38. Each local hospital district shall have and exercise the following powers:

(1) To have and use a corporate seal and alter it at pleasure;

(2) To sue and be sued in all courts and places and in all actions and proceedings whatever;

(3) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in same for the benefit of the district;

(4) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district, which power shall be exercised in the manner provided in sections 76-704 to 76-724;

(5) To administer any trust declared or created for hospitals of the district; and receive by gift, devise, or bequest and hold in trust or otherwise; property situated in this state or elsewhere; and, where when not otherwise provided, dispose of the same for the benefit of such hospitals;

(6) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district; and to perform such functions in respect to the legal affairs of the district as the board may direct;

(7) To employ such officers and employees, including architects and consultants, as the board of directors deems necessary to carry on properly the business of the district;

(8) To prescribe the duties and powers of the manager, secretary, and other officers and employees of any such hospitals; and to determine the number of and appoint all such officers and employees, and to fix their compensation. Such and such officers and employees shall hold their offices or positions at the pleasure of said such boards;

(9) To do any and all things which an individual might do which are necessary for and to the advantage of a hospital;

(10) To establish, maintain, lease, or and operate one or more hospitals, situated within the territorial limits of the district. Hospital, as used in the Nebraska Local Hospital District Act, shall have

the meaning as provided in subdivision (10) of section 23-343.92;

(11) To do any and all other acts and things necessary to carry out the provisions of sections 23-343.29 to 23-343.47 the Nebraska Local Hospital District Act; and

(12) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

Sec. 8. That section 49-14,103.01, Revised Statutes Supplement, 1986, be amended to read as follows:

49-14,103.01. (1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer shall mean (a) a member of the board of directors of a natural resources district, (b) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, and (c) any elected county, school district, city, or village official, and (d) a member of any board of directors or trustees of a district hospital as provided by the Nebraska Local Hospital District Act or a county hospital as provided by sections 23-343 to 23-343.19. Officer shall not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(2) Except as provided in sections 49-1499.01 and 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the county attorney, governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

The prohibition in this subsection shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in

section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(3) The provisions in subsection (2) of this section shall not apply if the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matter of granting the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matter; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(4) An officer who (a) has no business association as defined in section 49-1408 with the business involved in the contract or (b) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(5) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than five per cent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(6) If an officer's parent, spouse, or child is an employee of his or her governing body, the officer may vote on all issues of the contract which are generally applicable to (a) all employees or (b) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(7) Any contract entered into with an interested officer of the governing body shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the governing body.

(8) Nothing in this section shall prohibit a director of a natural resources district from acting as a participant in any of the conservation or other general district programs which are available for like participation to other residents and landowners of the district or from granting, selling, or otherwise transferring to such district any interest in real

property necessary for the exercise of its powers and authorities if the cost of acquisition thereof is equal to or less than that established by a board of three real estate appraisers qualified in accordance with sections 81-8,276 to and 81-8,287 or by a court of competent jurisdiction in an eminent domain proceeding.

District payments to a director of a natural resources district of the fair market value for real property owned by him or her and needed for district projects, or for cost sharing for conservation work on such director's land or land in which a director may have an interest, shall not be deemed subject to this section.

Sec. 9. That original sections 23-343.01, 23-343.04, 23-343.05, 23-343.12, 23-343.16, 23-343.17, and 23-343.38, Reissue Revised Statutes of Nebraska, 1943, and section 49-14,103.01, Revised Statutes Supplement, 1986, and also sections 23-343.09, 23-343.41, and 23-343.45, Reissue Revised Statutes of Nebraska, 1943, are repealed.