July 29, 1996

OPINION NO. 96-039

The Honorable P. Eugene Long, II
Pickaway County Prosecuting Attorney
P.O. Box 910
Circleville, Ohio 43113

Dear Prosecutor Long:

I am in receipt of your recent letter asking for an opinion on the following question:

May a person who holds a Juris Doctor and a Bachelor of Science in Biology, as well as an extensive work history in environmental fields including positions as Senior Environmental Specialist, Environmental Specialist, Environmental Technician, and Environmental Sanitarian, who has maintained a Registered Sanitarian status in Ohio since 1990, qualify for the position of commissioner of a general health district under R.C. 3709.11?

Your question arose because the Pickaway County Board of Health is seeking to fill the position of health commissioner with an individual who has the qualifications listed above. Your question is whether these qualifications satisfy the mandates of R.C. 3709.11.

R.C. 3709.11 defines the qualifications that the commissioner of a board of health must have in these words: "The person appointed as commissioner *shall be* a licensed physician, licensed dentist, a licensed veterinarian, licensed podiatrist, licensed chiropractor, or the holder of a master's degree in public health or *an equivalent master's degree in a related health field as determined by the members of the board of health* in a general health district." (Emphasis added.) Use of the term "shall be" indicates that the listed qualifications are mandatory. *See, e.g., Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971); 1979 Op. Att'y Gen. 79-007. Thus, a person may be appointed as commissioner of a general health district pursuant to R.C. 3709.11 only if the person is a licensed physician, a licensed dentist, a licensed veterinarian, a licensed podiatrist, a licensed chiropractor, the holder of a master's degree in public health, or the holder of an

equivalent master's degree in a related health field as determined by the members of the board of health in a general health district.[1]

It is clear that the individual in question is not a physician, dentist, veterinarian, podiatrist, chiropractor, or holder of a master's degree in public health. Therefore, the individual may be appointed as health commissioner only if that individual is the holder of "an equivalent master's degree in a related health field as determined by the members of the board of health in a general health district." R.C. 3709.11.

The language allowing for "an equivalent master's degree" expands the number of people who may be appointed health commissioner and gives the members of the board of health authority to determine whether the "equivalent" requirement is satisfied. The members of the board of health, however, have only the authority granted by statute. *See, e.g., Wetterer v. Hamilton County Bd. of Health*, 167 Ohio St. 127, 146 N.E.2d 846 (1957). Members of the board of health in a general health district are authorized pursuant to R.C. 3709.11 to determine whether an individual holds "an equivalent master's degree in a related health field," but if the individual does not hold such a degree or have any of the other qualifications listed in R.C. 3709.11, the members do not have authority to determine that other educational achievement or practical experience qualifies the individual to serve as health commissioner.

In the instant case, the individual does not have a master's degree. The individual has a bachelor's degree, which is not "an equivalent master's degree." The individual also has a juris doctor, which is a law degree. Like a master's degree, a juris doctor is a graduate degree. It does not appear, however, that a juris doctor can be considered "an equivalent master's degree in a related health field," both because it is not a master's degree (though it might be argued that it is at least equivalent in terms of academic requirements) and, more decisively, because law cannot reasonably be considered "a related health field."

Thus, though the board of health has some discretion in selecting a health commissioner, the board cannot lawfully determine in the instant case that the individual in question meets the qualifications set forth in R.C. 3709.11. It is evident that the individual has training and experience that would be useful to a health commissioner. Nonetheless, the individual lacks the requirements

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[1] 1979 Op. Att'y Gen. No. 79-007 addressed a question similar to the one you have presented, considering whether a person holding a master's degree in public administration met the qualifications set forth in R.C. 3709.11 and concluding that the person did not. At that time, R.C. 3709.11 did not list a licensed podiatrist or chiropractor and did not include the language permitting qualification through "an equivalent master's degree in a related health field." *See* 1979-1980 Ohio Laws, Part II, 3527 (Am. H.B. 739, eff. Oct. 6, 1980). While the statutory changes made to R.C. 3709.11 since the issuance of 1979 Op. Att'y Gen. No. 79-007 have expanded the list of acceptable qualifications, they have not changed the conclusion that a person who does not have one of the qualifications listed in R.C. 3709.11 may not be appointed to the position of commissioner of a general health district.

established by statute and, therefore, cannot be appointed as commissioner of a general health district pursuant to R.C. 3709.11.

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. A person may be appointed as commissioner of a general health district pursuant to R.C. 3709.11 only if the person is a licensed physician, a licensed dentist, a licensed veterinarian, a licensed podiatrist, a licensed chiropractor, the holder of a master's degree in public health, or the holder of an equivalent master's degree in a related health field as determined by the members of the board of health in a general health district. (1979 Op. Att'y Gen. No. 79-007 expanded because of statutory amendments.)

2. Members of the board of health in a general health district are authorized pursuant to R.C. 3709.11 to determine whether an individual holds "an equivalent master's degree in a related health field," but if the individual does not hold such a degree or have any of the other qualifications listed in R.C. 3709.11, the members do not have authority to determine that other educational achievement or practical experience qualifies the individual to serve as health commissioner.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 96-039

1. A person may be appointed as commissioner of a general health district pursuant to R.C. 3709.11 only if the person is a licensed physician, a licensed dentist, a licensed veterinarian, a licensed podiatrist, a licensed chiropractor, the holder of a master's degree in public health, or the holder of an equivalent master's degree in a related health field as determined by the members of the board of health in a general health district. (1979 Op. Att'y Gen. No. 79-007 expanded because of statutory amendments.)

2. Members of the board of health in a general health district are authorized pursuant to R.C. 3709.11 to determine whether an individual holds "an equivalent master's degree in a related health field," but if the individual does not hold such a degree or have any of the other qualifications listed in R.C. 3709.11, the members do not have authority to determine that other educational achievement or practical experience qualifies the individual to serve as health commissioner.