May 15, 1997

OPINION NO. 97-029

The Honorable William E. Peelle
Clinton County Prosecuting Attorney
69 North South Street, Suite 200
Wilmington, Ohio 45177

Dear Prosecutor Peelle:

We have received your letter concerning the operations of a county general health district. Your specific question is whether the Clinton County General Health District is a "county office" subject to the jurisdiction of the Clinton County Automatic Data Processing Board. Your representative has informed us that the health district in question is a combined health district, including the territory of townships, villages, and a city. *See* R.C. 3709.07-.071.

In order to answer your question, we must first look to the provisions governing county automatic data processing boards. A county automatic data processing board is created, pursuant to R.C. 307.84, by the board of commissioners of a county. It consists of representatives of various governmental offices, including the county treasurer, the county auditor, the county recorder, the board of county commissioners, and the clerk of the court of common pleas. R.C. 307.84.

The county automatic data processing board is responsible for coordinating the automatic data processing equipment in use throughout the county offices, and it is authorized to establish an automatic data processing center to provide a centralized system for the use of automatic data processing equipment for all county offices. R.C. 307.842. After the board has its initial meeting, "no county office" is permitted to "purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior approval of the board." R.C. 307.84; *see also* R.C. 307.842.

For purposes of the statutes governing automatic data processing boards, *see* R.C. 307.84-.846, "county office" is defined to mean "any officer, department, board, commission, agency, court, or other office of the county, other than a board of county hospital trustees." R.C. 307.84. To answer your question, then, it is necessary to determine whether a general health district is an office of the county.

This question has been considered in the past, and it has consistently been concluded, in various contexts, that a general health district is not a county office. For example, 1991 Op. Att'y Gen. No. 91-016, at 2-80, states plainly: "The health districts are political subdivisions of the state, governed by state law, and are separate from any city, county, township or other local government." *See also, e.g.*, 1990 Op. Att'y Gen. No. 90-106, at 2-468 ("a board of health is not a county board"); 1974 Op. Att'y Gen. No. 74-032, at 2-144 (the general health district of a county "is an arm of the state and derives its authority directly from the state"); 1965 Op. Att'y Gen. No. 65-121 (syllabus, paragraph 1) ("[a] general health district...is not a part of municipal or county government").

A general health district is not an office of the county because it is an entity separate and distinct from the county. Pursuant to R.C. 3709.01, the state is divided into general health districts (which include townships and villages) and city health districts. Various combinations of districts are permitted. *See, e.g.*, R.C. 3709.01. Any such combination that includes a general health district is also known as a general health district. *See* R.C. 3709.07-.071; R.C. 3709.10; 1991 Op. Att'y Gen. No. 91-016. Thus, health districts are created as divisions of the state and are considered to be separate political subdivisions. *See State ex rel. Mowrer v. Underwood*, 137 Ohio St. 1, 27 N.E.2d 773 (1940); 1995 Op. Att'y Gen. No. 95-030, at 2-149; 1980 Op. Att'y Gen. No. 80-087, at 2-342.

The manner in which a general health district is governed establishes its independence from the county. Various methods of organization are permitted for the different types of health districts. *See* R.C. 3709.02-.04; R.C. 3709.07-.071; R.C. 3709.10; 1995 Op. Att'y Gen. No. 95-030. A combined district of the sort that you have described has a district advisory council consisting of representatives of the county and of townships and municipal corporations within the combined district. R.C. 3709.03; R.C. 3709.07. The combined district, by contract, may be administered by the board of health or health district of a city within the district, by the board of health of the original general health district, or by a combined board of health. R.C. 3709.07-.071. Members of the board of health may be appointed by the city or cities they represent, by the general health district advisory council, or as provided in a petition for union. R.C. 3709.02-.04; R.C. 3709.07-.071. If the district advisory council fails to act, the Director of Health, with the consent of the Public Health Council, may appoint members to a board of health. R.C. 3709.03-.04. Thus, a county is not responsible for governing a general health district and is only one of several bodies that may participate in selecting the governing body of such a district.

The manner in which a general health district is financed provides further indication that the district is not a county board. A general health district may obtain funding from various sources, including the state and the collection of fees. R.C. 3709.28; R.C. 3709.32. Local funding is obtained from taxes within the ten-mill limitation levied by the townships and municipal corporations that form the district. R.C. 3709.28; R.C. 3709.29. The board of health of a general health district submits an itemized appropriation measure and an estimate of its sources of revenue to the county auditor for submission to the county budget commission. The amounts needed are apportioned by the auditor among the townships and municipal corporations comprising the health district on the basis of taxable valuations in those townships and municipal corporations. Moneys received for the district are placed in the district health fund. R.C. 3709.28; *see also* 1986 Op. Att'y Gen. No. 86-022.

If there is a need for additional funds, the board of county commissioners is authorized to act as a special taxing authority for the purpose of submitting to the voters the question of a special levy outside the ten-mill limitation for the general health district. R.C. 3709.29; *see also Village of South Russell v. Budget Comm'n*, 12 Ohio St. 3d 126, 465 N.E.2d 876 (1984). Such a tax is levied on the territory located in the district. R.C. 3709.29; 1986 Op. Att'y Gen. No. 86-022. Thus, the tax burden falls on territory of the district and is not adopted as a countywide tax.

R.C. 3709.34 states that the board of county commissioners or the legislative authority of any city "may furnish suitable quarters" for a board of health with jurisdiction over all or a major part of the county or city. This provision has been construed to require that a county provide a general health district with office space and utilities, when the general health district consists only of territory in townships and villages within the county. *See, e.g.*, 1996 Op. Att'y Gen. No. 96-016. If, however, the health district is a combined general health district that includes territory of a city, then either the city or the county may furnish office space and utilities, but neither is required to do so. *See, e.g.*, 1996 Op. Att'y Gen. No. 96-016, at 2-63 n.1; 1991 Op. Att'y Gen. No. 91-016. A county may, thus, have certain responsibilities for providing a health district with facilities. In general, however, the health district is funded as an independent entity and is responsible for its own operations.

A county has various connections and responsibilities with respect to a general health district that encompasses territory within the county, as discussed above. In addition, the prosecuting attorney of the county constituting all or a major part of a general health district acts as legal advisor of the board of health, R.C. 3709.33, and the treasurer and auditor of that county also serve the district, R.C. 3709.31. These connections with the county, however, are not sufficient to make the health district a county office, in light of its existence as a separate entity.

For the reasons discussed above, it must be concluded that a general health district is not a county office. Because it is not a county office, the general health district is not subject to the jurisdiction of the county automatic data processing board and is not required to obtain the board's approval pursuant to R.C. 307.84. *Cf., e.g.*, 1996 Op. Att'y Gen. No. 96-052 (soil and water conservation district created under R.C. 1515.03 is not a county office for purposes of provisions relating to the county automatic data processing board).[1]

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[1] An indication that the General Assembly did not consider a health district to be a county office for purposes of approval by the county automatic data processing board appears in R.C. 307.846. That section authorizes a county automatic data processing board to contract to provide automatic data processing services to various governmental entities, including a health district, and to charge the contracting entities for the services provided. The statute goes on to state that "[c]ounty offices may also be charged for such services." R.C. 307.846. The clear implication is that the entities with which the county automatic data processing board may contract — including health districts — are not considered to be county offices for purposes of R.C. 307.84.

Even though a health district is not a county office, the county, as discussed above, may provide the district with office space and utility services pursuant to R.C. 3709.34. The inclusion of

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a health district as an entity with which a county automatic data processing board may contract under R.C. 307.846 suggests that automatic data processing services are not included within the "suitable quarters" that a county may provide pursuant to R.C. 3709.34. It is possible, however, that the provision of automatic data processing equipment (*e.g.*, computers) and the provision of utilities (*e.g.*, telephone lines) may overlap to some degree. To the extent that the board of county commissioners provides to a health district pursuant to R.C. 3709.34 any items or services that are included within the jurisdiction of the county automatic data processing board, the board of county commissioners remains subject to the jurisdiction of the board under R.C. 307.84.

On the basis of the preceding discussion, it is my opinion, and you are advised, that a general health district is not a county office and, therefore, is not subject to the jurisdiction of the county automatic data processing board.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 97-029

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