March 12, 1996

OPINION NO. 96-016

The Honorable Jim Slagle
Marion County Prosecuting Attorney
133½ E. Center Street
Marion, Ohio 43302

Dear Prosecutor Slagle:

I have before me your request for an opinion concerning the responsibility of a board of county commissioners to provide suitable quarters for the general health district of the county. Specifically, you wish to know:

1.Is a board of county commissioners required, pursuant to R.C. 3709.34, to provide and pay for utilities used by the general health district of the county?

2.Is a board of county commissioners required to pay the cost of long distance telephone service furnished to the general health district of the county?

R.C. 3709.34 provides: "The board of county commissioners or the legislative authority of any city may furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of such county or city." This statute has been consistently interpreted as imposing a mandatory duty upon a board of county commissioners to furnish suitable quarters for a general health district.[1] As stated in 1985 Op. Att'y Gen. No. 85-003 at 2-7 and 2-8:

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[1] An exception to the construction of R.C. 3709.34 as mandatory has been recognized when the health district in question is a combined general health district created under R.C. 3709.07, for the statute does not indicate whether the county or a city should bear the responsibility of providing office space in such circumstances. *See* 1991 Op. Att'y Gen. No. 91-016; 1983 Op. Att'y Gen. No. 83-081; 1954 Op. Att'y Gen. No. 3499, p. 47. As stated in 1985 Op. Att'y Gen. No. 85-003 at 2-8 n.1:

> When a general health district is formed by the union of a general health district and a city health district pursuant to R.C. 3709.07, either the legislative authority of the

The word "may" is generally regarded as imperative when it appears in a statute conferring authority to perform an act which the public interest demands. *See, e.g., Pennsylvania Railroad Co. v. Porterfield*, 25 Ohio St. 2d 223, 267 N.E.2d 792 (1971). *See also* 1983 Op. Att'y Gen. No. 83-081. It has been concluded that the public interest requires that a board of health of a general health district function, and that facilities be furnished to the board to enable it to carry out its statutory duties; *thus, it has been concluded that R.C. 3709.34 imposes a mandatory duty upon a board of county commissioners to furnish suitable quarters for a general health district. See* Op. No. 80-086; 1972 Op. Att'y Gen. No. 72-098; 1949 Op. Att'y Gen. No. 1085, p. 737; 1932 Op. Att'y Gen. No. 3989, vol. I, p. 106. (Emphasis added and footnote omitted.)

Accord 1989 Op. Att'y Gen. No. 89-038; 1986 Op. Att'y Gen. No. 86-037.

Prior opinions of the Attorney General that have attempted to define what constitutes suitable quarters have determined that a board of county commissioners has discretion to determine what is suitable, so long as the quarters furnished have the facilities necessary to enable the general health district to discharge its mandatory duties. 1985 Op. Att'y Gen. No. 85-003; *see* 1989 Op. Att'y Gen. No. 89-038; 1949 Op. Att'y Gen. No. 1085, p. 737. In this regard, 1980 Op. Att'y Gen. No. 80-086 states at 2-339:

[A] board of county commissioners must provide the general health district with office space which includes running water, toilet facilities, heat and light.
There can be no doubt that the obligation to provide utilities includes the obligation to pay for the use of such utilities. Therefore, it is my opinion, and you are advised, that the board of county commissioners must provide and pay for utilities used by the general health district of the county.

In addition, 1986 Op. Att'y Gen. No. 86-037 at 2-193 concluded as follows:

Thus, even as electric, heating, and water service furnished a general health district may be considered utilities for purposes of R.C. 3709.34, *see* Op. No. 80-086 at 2-339, telephone service furnished a general health district may similarly be considered a utility for purposes of that section. *A board of county commissioners, therefore, must provide and pay for all such telephone service utilized by a general health*

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city or the board of county commissioners may furnish offices to the health district, although neither is required to do so, or the expense of renting quarters may be treated as an operating expense and apportioned in the same manner as other operating expenses are apportioned under the contract creating the combined general health district.

> *district pursuant to its obligation under R.C. 3709.34 to provide a board of health with suitable quarters.* (Emphasis added.)

See also 1989 Op. Att'y Gen. No. 89-038.

The foregoing opinions thus held that suitable quarters include, at a minimum, electric, heating, water, and telephone service. The reasoning underlying these opinions was that these utilities are necessary to enable the general health district to fulfill its statutory duties.

"A long line of opinions is entitled to great deference in the absence of legislative amendment of the statutory language being interpreted therein." 1990 Op. Att'y Gen. No. 90-080 at 2-341. The language of R.C. 3709.34 interpreted by my predecessors in previous opinions has not been amended.[2] Moreover, the public interest requires that a general health district be able to perform its statutory duties. It is readily apparent that a general health district would be unable to perform its mandatory duties if it were not provided basic utilities. Accordingly, in answer to your first question, I concur with my predecessors' conclusion that a board of county commissioners, in order to meet its mandatory duty to furnish a general health district with suitable quarters, must provide and pay for those utilities necessary for the general health district of the county to discharge its statutory duties. *See generally* 1974 Op. Att'y Gen. No. 74-032 at 2-144 and 2-145 (indicating that R.C. 307.01, which requires a board of county commissioners to provide offices, equipment, and other facilities for county officers, applies to a general health district and requires the board of county commissioners to provide such facilities as would be conducive to the expeditious and economical administration of a general health district).

You have also asked whether the board of county commissioners is required to pay the cost of long distance telephone service furnished to the general health district of the county. As stated above, 1986 Op. Att'y Gen. No. 86-037 concluded that telephone service is a utility for purposes of R.C. 3709.34, the cost of which must be paid for by the board of county commissioners. *See* 1989 Op. Att'y Gen. No. 89-038. This opinion did not, however, make a distinction between local and long distance telephone service. Nevertheless, it is apparent that both local and long distance telephone service are necessary to conduct the affairs of the general health district. *See* 1933 Op. Att'y Gen. No. 92, vol. I, p. 87 at 89-90 ("[i]n order to expedite business, long distance telephone calls are often necessary, and the expense of such calls seems to me to be a proper charge against the maintenance appropriation made by the county commissioners for the supplies and facilities of the office of the prosecuting attorney under [R.C. 307.01]"). *See generally* 1978 Op. Att'y Gen. No. 78-

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[2] Prior to the adoption of the Revised Code, the provisions of R.C. 3709.34 were set forth in G.C. 1261-36. The language of R.C. 3709.34 and G.C. 1261-36 is substantially the same, but not identical. However, by reason of R.C. 1.30, the provisions of R.C. 3709.34 are deemed a mere restatement without substantive change of former G.C. 1261-36. *See State v. Kotapish*, 171 Ohio St. 349, 352, 171 N.E.2d 505, 507 (1960) ("[i]n adopting the Revised Code, the General Assembly specifically stated in Section 1.24 [now R.C. 1.30] that it did _not_ intend _to change the law as heretofore expressed by the section or sections of the General Code_").

042 at 2-99 ("[t]elephone equipment is by any standard essential office equipment"). *But see generally* 1989 Op. Att'y Gen. No. 89-038 (syllabus) ("[m]obile telephone service is a utility for purposes of R.C. 3709.34, the cost of which must be paid for by the board of county commissioners, if the board reasonably determines that such mobile telephone service is necessary for the general health district to discharge its statutory duties"). Therefore, since a board of county commissioners is required, pursuant to R.C. 3709.34, to provide and pay for those utilities necessary for the general health district of the county to discharge its statutory duties, the board must provide and pay for long distance telephone service used by the general health district.

Accordingly, it is my opinion and you are hereby advised as follows:

1. Pursuant to R.C. 3709.34, a board of county commissioners is required to provide and pay for those utilities necessary for the general health district of the county to discharge its statutory duties. (1980 Op. Att'y Gen. No. 80-086, approved and followed.)

2. Long distance telephone service is a necessary utility for purposes of R.C. 3709.34, the cost of which must be paid by a board of county commissioners. (1986 Op. Att'y Gen. No. 86-037, approved and followed.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

March 12, 1996

The Honorable Jim Slagle
Marion County Prosecuting Attorney
133½ E. Center Street
Marion, Ohio 43302

SYLLABUS: 96-016

1.Pursuant to R.C. 3709.34, a board of county commissioners is required to provide and pay for those utilities necessary for the general health district of the county to discharge its statutory duties. (1980 Op. Att'y Gen. No. 80-086, approved and followed.)

2.Long distance telephone service is a necessary utility for purposes of R.C. 3709.34, the cost of which must be paid by a board of county commissioners. (1986 Op. Att'y Gen. No. 86-037, approved and followed.)