

The general purpose of such authority is to enable the municipality to serve the inhabitants by providing for the supplying of such a service.

It will be observed that if a municipality may not enter into such an arrangement, it is easy to conceive of circumstances wherein such a rule would practically confiscate the property. If it should develop that the municipality must operate at a loss, and it has no power to lease such equipment, then it must take its choice of continually operating at a loss or practically abandoning the equipment. In this connection, it must be remembered that the Constitution authorizes the execution of bonds to be secured upon the property when it is purchased from a private concern, all of which contemplates the application of business principles to such transaction.

In the case of *Travelers Insurance Co. vs. Village of Wadsworth*, 109 O. S., 440, it was held, as evidenced by the second branch of the syllabus that:

“The power to establish, maintain, and operate a municipal light and power plant, under the Constitution and statutes aforesaid, is a proprietary power, and in the absence of specific prohibition, the city acting in a proprietary capacity may exercise its powers as would an individual or private corporation.”

It will be noted that the same constitutional provision was under consideration in this opinion that is under consideration now. If this opinion is to be given the interpretation that the plain language thereof imports, it must be said that in the exercise of the proprietary functions in the operation of a public utility, the municipality is limited only as a private individual would be limited.

Applying the principles of this case to the case under consideration, the conclusion must be that a municipality may enter into a reasonable contract whereby it leases its equipment requiring the lessee to furnish gas at a reasonable rate to the inhabitants of such municipality.

Respectfully,
C. C. CRABBE,
Attorney General

2758.

COUNTY HEALTH DISTRICTS—SECTION 3 OF AMENDED SUBSTITUTE SENATE BILL NO. 94, IS NOT APPLICABLE TO HEALTH DISTRICTS—SECTIONS FOUR AND FIVE OF THE ACT ARE APPLICABLE TO GENERAL HEALTH DISTRICTS.

SYLLABUS:

Section 3 of amended substitute senate bill No. 94 is not applicable to county health districts.

Sections 4 and 5 of the above act are applicable to county health districts.

COLUMBUS, OHIO, Sept. 4, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication as follows:

“We respectfully request your written opinion upon the following:

“Section 1261-40 G. C., requires that the board of health of a general

health district shall annually on or before the first Monday of April estimate in itemized form the amounts needed for the current expense of said district for the fiscal year beginning on the first day of January next ensuing. It further requires that this estimate be submitted to the county auditor and by him to the budget commission and the amount approved by the budget commission is required to be apportioned by the county auditor to the various municipalities and townships composing the health district.

"Question 1: Is this provision affected by section 3 of amended substitute senate bill No. 94, requiring the preparation of budgets, holding of public hearings thereon and filing the same with the county auditor on or before the 20th day of July; in other words, do the provisions of section 3 of senate bill No. 94 apply to the board of health of a general health district?"

"Question 2: Do the provisions of section 5 of senate bill No. 94, relating to appropriations and requiring such appropriations to be submitted to the county auditor, apply to the general health districts?"

"Question 3: Do the provisions of section 4 of senate bill No. 94, relating to estimates to be made by the county budget commission of balances at the end of the fiscal year and revenue for the fiscal year apply to county health districts?"

Section 1261-40, General Code, in part provides:

"Annual estimate for current expenses of district, apportionment by county auditor; certification of state's proportion; when district composed of two or more townships, etc., in two or more counties. The board of health of a general health district shall annually, on or before the first Monday of April estimate in itemized form the amounts needed for the current expenses of such districts, for the fiscal year, beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submitted to the budget commissioners which may reduce any item or items in such estimate but may not increase any item or the aggregate of all items. The aggregate amount as fixed by the budget commissioners shall be apportioned by the county auditor among the townships and municipalities composing the health district on the basis of taxable valuations in such townships and municipalities."

This section provides for an estimate in itemized form of the amounts needed for the current expenses of such health district for the fiscal year. This estimate is certified to the county auditor and by him submitted to the budget commission and the amount fixed by the budget commissioners is apportioned by the county auditor among the townships and municipalities forming such district and is taken out of the tax collection of the respective subdivisions. Nowhere in the act relating to health districts is any authority given to the board of health to levy a tax.

Section 3 of amended senate bill No. 94 provides in part as follows:

"On or before the 15th day of July in each year, the county commissioners of each county, the board of education of each school district, and council or other legislative authority of each municipality, including charter municipalities, the trustees of each township, and any other public body authorized by law to levy taxes, shall adopt a budget for the next succeeding fiscal year."

It will be noted that section 3 requires that the county commissioners of each

county, the board of education of each school district, council or other legislative authority of each municipality, the trustees of each township and any other public body authorized by law to levy taxes, shall adopt a budget for the next succeeding fiscal year. A general health district is not included within the political subdivision enumerated in this section and is not a public body authorized to levy taxes. A general health district is only authorized to submit an estimate for current expenses of the health district and no levy is actually made for such expenses except as it is apportioned by the county auditor among the townships and municipalities composing the health district.

It is, therefore, my opinion that the general health district is not required to submit a budget as provided in section 3 of amended substitute senate bill No. 94, but is governed by section 1261-40, General Code.

Section 4 of this act in part provides :

"In addition to its other duties, the county budget commission of each county shall, from the information furnished by the budgets and accompanying data and from other sources of information available to it, determine with respect to its county and to each political subdivision and taxing district within the county the probable amounts of the free and unencumbered balances at the beginning of the succeeding fiscal year, and of the revenues from each and every source which will be respectively available for the use of the county and of each such political or taxing subdivision or district for and during such fiscal year, after making the adjustments amongst the county and the subdivisions and districts authorized by the laws relating to tax limitations."

Section 5 of this act in part provides :

"At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county school districts, the council or other legislative authority of every municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county, school district, municipal corporation, township, or other political subdivision or taxing district."

It will be noted that section 4 as quoted above, provides that the county budget commission shall determine with respect to each political subdivision and taxing district within the county the probable amounts of the free and unencumbered balances at the beginning of the succeeding fiscal year, and of the revenues from each and every source which will be respectively available for the use of such political or taxing subdivision or district for and during such fiscal year.

As a general health district is a political subdivision, it would come within the provisions of section 4 of this act and require that the appropriation for such general health district be submitted to the county auditor.

It will also be noted that section 5 of this act provides that the county commissioners, the board of education, the council or other legislative authority of every municipal corporation, trustees of every township and the governing board or body of every other type or political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriation for the several purposes for which expenditures are to be made for and during the fiscal year.

As a general health district is in addition to being a political subdivision a governing board or body authorized by law to expend public funds, it will be required to comply with section 5 of this act.

Respectfully,
C. C. CRABBE,
Attorney General.

2759.

ABSTRACT, STATUS OF TITLE, LOTS 23 AND 24 OF R. P. WOODRUFF'S AGRICULTURAL COLLEGE ADDITION TO THE CITY OF COLUMBUS, OHIO.

COLUMBUS, OHIO, Sept. 4, 1925.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You have submitted a partial abstract certified to by John K. Kennedy, attorney-at-law, August 13, 1925, and inquire as to the status of the title of lots 23 and 24 of R. P. Woodruff's subdivision of the south half of the south half of lot 278 of R. P. Woodruff's Agricultural College addition to the city of Columbus, as disclosed by said abstract.

In view of the number of titles approved by this department which are based upon the conveyance of William H. Barbee, sheriff, as referred to in said abstract, it is believed unnecessary to go back of this conveyance.

After an examination, it is believed that the said partial abstract shows a sufficient title to be in the name of Melancton Worthington, free from encumbrance excepting the taxes for the year 1925, which are undetermined, unpaid and a lien.

However, there has been submitted in connection with said partial abstract an affidavit of transfer which is believed to be sufficient to convey the premises from the said Melancton Worthington to Lilly Maud Beach, his only heir at law, when properly recorded.

You have further submitted an affidavit of transfer which is believed to be sufficient to transfer said premises from the name of Lilly Maud Beach to Thomas M. Beach, Welling G. Beach and Bertha Esther Paul, each of whom, according to the affidavits, have inherited a one-third interest in the premises, and in the event you should purchase the premises, a proper deed should be executed by them, and the affidavits heretofore mentioned should be recorded in order to complete the title of record.

You have also submitted Encumbrance Estimate No. 425, which contains the certificate of the director of finance to the effect that there are unencumbered balances in the interest on endowment fund sufficient to cover the purchase of said property.

The abstract, encumbrance estimate and the affidavits of transfer are being returned herewith.

Respectfully,
C. C. CRABBE,
Attorney General.