

## OPINION NO. 75-036

## Syllabus:

City and general health districts are political subdivisions under R.C. 2743.01(B), and thus under the new Court of Claims Act (R.C. 2743.02) do not lose their sovereign immunity.

To: John H. Ackerman, Director of Health, Ohio Department of Health, Columbus, Ohio

By: William J. Brown, Attorney General, May 22, 1975

I have before me a request from your predecessor for my opinion which reads as follows:

"In reviewing Am. Sub. H.B. No. 800 as enacted by the 110th General Assembly, we note that health districts as created by Chapter 3709. of the Revised Code appear to fall under the definition of 'State' as used in section 2743.01 of the Revised Code. However, a review of the procedures provided in the Act for recovery of judgements against the state do not appear to envision recovery against a board of health of a health district.

"In view of this Department's close legal relationship with local health departments for providing public health services throughout Ohio, I respectfully request your formal opinion as to whether the waiver of immunity from liability as set forth in section 2743.02 of the Revised Code applies to boards of health of city and general health districts."

Sub. H.B. No. 800 (now Chapter 2743 of the Revised Code) which became effective January 1, 1975, provided a waiver of the state's sovereign immunity and created a court of claims in which suits against the state could be brought. R.C. 2743.02(A) provides in part that "The state hereby waives its immunity from liability and consents to be sued. . . ." R.C. 2743.01 contains the following relevant definitions:

"As used in Chapter 2743. of the Revised Code:

"(A) 'State' means the State of Ohio, including without limitation, its departments, boards, offices, commissions, agencies, institutions, and other instrumentalities. It does not include political subdivisions.

"(B) 'Political subdivisions' means municipal corporations, townships, villages, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of that state attaches."

Accordingly, the critical issue is whether health districts are state agencies or, on the other hand, political subdivisions.

The health districts of R.C. 3709.01 are divided into "city health districts" which are composed of cities, and "general health districts", which are composed of combinations of townships and villages. A brief look into the history of these general and city health districts reveals that in 1919, the General Assembly enacted the Hughes and Griswold Acts (108 Ohio Laws 236, 1085) which removed the powers of local health administration from municipalities and conferred them upon the then newly created city and general health districts. These districts derive their authority directly from the state, rather than from their constituent political subdivisions. State ex rel. Cuyahoga Heights v. Zangerle, 103 Ohio St. 566 (1920); 1974 Op. Att'y Gen. Nos. 74-014 and 74-003; 1972 Op. Att'y Gen. No. 72-088; 1971 Op. Att'y Gen. No. 71-078. The Court in State ex rel. Mowrer v. Underwood, 137 Ohio St. 1 (1940) considered the relationship between city health districts and municipalities under the Hughes and Griswold Acts. The Court stated, at page 5:

"This, in our opinion, evidences a legislative intent to withdraw from municipalities the powers of local health administration previously granted to them, and to create in each city a health district which is to be a separate political subdivision of the state, independent of the city with which it is coterminus, and to delegate to it all the health powers thus withdrawn from municipalities. As such the city health district becomes an agency of the state and is governed by the laws of the state."  
(Emphasis added.)

Subsequent cases and Opinions of this office have also stated that both city and general health districts are state agencies. Board of Health of St. Bernard v. St. Bernard, 19 Ohio St. 2d 49 (1969); Davies, Inc. v. Sensenbrenner, 79 Ohio L. Abs. 33 (C.P. 1957), appeal dismissed, 168 Ohio St. 356 (1958), cert. denied, 359 U.S. 983 (1959); Op. No. 74-014, supra; 1973 Op. Att'y Gen. No. 73-097; Op. No. 72-088, supra; Op. No. 71-078, supra.

However, all these cases and Opinions except Op. No. 72-088, supra, cite State ex rel. Mowrer v. Underwood, supra, as authority for their holding. As you will recall in the foregoing quotation from that case, the Court also referred to city health districts as political subdivisions. I similarly defined city health districts in 1973 Op. Att'y Gen. No. 73-062.

An examination of the cases and Opinions involved here clarifies this seemingly inconsistent terminology. Those which defined city and general health districts as state agencies were concerned with the relationship between those districts and the municipalities, townships and villages which comprise them. They all held that health districts were independent from those municipal, township, and village governments within their boundaries. Thus, the term "state agency" was utilized to indicate that health districts were a separate part of state government and not a branch of municipal or county government as they had been prior to the Hughes and Griswold Acts. The precise relationship of city and general health districts to the state itself was never at issue, as it is here.

Beyond any doubt, boards of health exercise governmental powers. The state is divided into city and general health districts and combinations thereof, pursuant to R.C. 3709.01, 3709.051, 3709.07, and 3709.10. Each is governed by a board of health, which is granted statutory powers. It is this territorial division of responsibility for governmental functions which is the essence of political subdivisions. See Op. Att'y Gen. No. 72-035.

In the syllabus of 1972 Op. Att'y Gen. No. 72-035, I defined political subdivision as follows:

"A political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority."

As that Opinion pointed out, both state instrumentalities and political subdivisions exercise governmental power. The only fundamental difference between them is the latter's limited geographical jurisdiction. R.C. 2743.01(B) follows this standard definition, referring to political subdivisions as "Responsible for governmental activities only in geographic areas smaller than that of the state." For these reasons it is clear that health districts are political subdivisions, not state agencies.

I also note that city and general health district boards are funded by the municipalities, townships and villages within each district, except for a minor state subsidy provided under R.C. 3709.32. See R.C. 3709.28, 5705.05(C). However, R.C. 2743.19 contemplates payment of judgments out of state funds, thus clearly indicating that only governmental agencies funded by the state have lost their immunity under R.C. 2743.02. See 1974 Op. Att'y Gen. No. 74-098. Your letter mentions this point, and it is consistent with my conclusion that boards of health are political subdivisions for purposes of R.C. 2743.01.

Furthermore, Op. Att'y Gen. No. 71-078 advised that board of health employees were not employees "paid in whole or part by the state" under R.C. 143.29 (now R.C. 124.38). See also 1965 Op. Att'y Gen. No. 65-121. And 1960 Op. Att'y Gen. No. 1302, p. 298, also advised that city health districts were not "public agencies" under R.C. 143.29. Thus, employees of a city or general health district board transferring to the department of health were not entitled to be credited with sick leave hours, accumulated but not used when they were employed by the board. Since such employees are not state employees, it would be anomalous to call the health districts state agencies.

In specific answer to your question, it is my opinion and you are so advised that city and general health districts are political subdivisions under R.C. 2743.01(B), and thus under the new Court of Claims Act (R.C. 2743.02) do not lose their sovereign immunity.