

4244.

APPROPRIATION—COUNTY COMMISSIONERS HAVE NO CONTROL OVER APPROPRIATIONS FOR DISTRICT HEALTH COMMISSIONER AND COUNTY SCHOOL SUPERINTENDENT—COUNTY BUDGET COMMISSION MAY NOT CUT APPROPRIATIONS.

*SYLLABUS:*

1. *The county commissioners have no control over the appropriation for a district health commissioner, even though the territorial limits of the health district within his jurisdiction are co-terminous with the boundaries of the county.*

2. *The county commissioners have no control over the appropriation for the county school superintendent.*

3. *The county budget commission has no jurisdiction to cut appropriations made by subdivisions or districts; its authority over taxation ceases when the budget is completed.*

COLUMBUS, OHIO, April 13, 1932.

HON. R. H. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—This will acknowledge your request for opinion in answer to the following questions:

"1. Have the county commissioners any control over the appropriation for the county health commissioner?

2. Have the county commissioners any control over the appropriation for the county school superintendent?

3. Has the county budget commission a right to cut the appropriation for either officer after it is set by the district board of health or county board of education?"

Your first and second inquiries raise the question as to the extent of powers or authority of the county commissioners. Such powers are derived solely from statutory authority. In the words of Spear, J., in *County Commissioners vs. Gates*, 83 O. S., 19, at page 30:

"Now a county is not a corporate body but rather a subordinate political division, an instrumentality of government, clothed with such powers and such only as are given by statute, and liable to such extent and such only as the statutes prescribe. The board of commissioners acts in such matters as the construction of ditches in a political rather than a judicial capacity, and that body also in such action is clothed with such powers only as the statutes afford."

The county commissioners are the taxing authority of a county by reason of paragraph (c) of Section 5625-1, General Code:

"(c) 'Taxing authority' \* \* \* shall mean in the case of any county, the county commissioners \* \* \*"

and being such, by reason of the provisions of Section 5625-29, General Code, must make the appropriations of tax funds for county purposes.

Sec. 5625-29. "On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. \* \* \*

Your first inquiry raises the legal question as to whether a general health district is a county function or agency. If it is such agency, it would appear that the appropriations therefor would be made by the board of county commissioners.

The "county health commissioner" referred to in your communication, is evidently the health commissioner occupying the office or position created by Section 1261-19, General Code, since I find no other provision of the statute authorizing the employment of any other "health commissioner" for the county territory.

Section 1261-16, General Code, creating health districts, in so far as material to your inquiry, reads:

"For the purpose of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act (G. C. §§ 1261-16 et seq.) shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district."

The management and control of the functions of health districts are vested in district boards of health by Section 1261-17, General Code, which reads in part, as follows:

"In each general health district \* \* \* there shall be a district board of health consisting of five members to be appointed as hereinafter provided and as provided in section 4406 of the General Code. \* \* \*

As stated in 20 Ohio Jurisprudence, 557, such "boards of health are appointed as subordinate departments of the state."

Section 1261-19, General Code, provides for the fixing of the term of office and salary of the district health commissioner as follows:

"\* \* \* The district board of health shall appoint a district health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the district board. \* \* \*

From the language of both the "Hughes Act" (108 O. L. 236) and the "Griswold Act" (108 O. L. 236) now forming Sections 1245, 1246, Sections 1261-16 to 1261-43 and 4404 to 4413, inclusive, General Code, it is clearly evident that the intent of the legislature was to provide a uniform plan of administration of health laws, and for that purpose it created a State Department of Health and certain general health districts and municipal health districts. The general administration of health regulations throughout the state was placed in the State Department of Health and the local matters of administration in the district boards under the

supervision of the State Director of Health. It is evident from the language of Section 1261-16, *supra*, that the legislature has, for the purpose of administration of the health laws, created a separate and distinct district authority, the territorial jurisdiction of which may be co-extensive with the limits of the county.

The Court of Appeals for Stark County, in the case of *Board of Health vs. The City of Canton*, 40 Ohio App., 77, in construing these sections, in so far as they apply to municipal health districts and boards, held that a city health district, created by authority of the above mentioned sections of the statute, was not a municipal institution even though the geographical boundaries thereof were the same as those of the municipality, and that the employes of such municipal health districts were not employes of the city.

An examination of the statutes fails to disclose that any powers have been granted to the county commissioners concerning boards of health except by Section 1261-36, General Code, which provides that either the county commissioners or the city council "may furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of such county."

Sections 1261-40 and 1261-41, General Code, provide the manner of levy and apportionment of taxes for the purposes of a general health district. Section 1261-40, General Code, reads as follows:

"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 valuation in such townships and municipalities.

The district board of health shall certify to the county auditor the amount due from the state as its share of the salaries of the district health commissioner and public health nurse and clerk, if employed, for the next fiscal year which shall be deducted from the total of such estimate before an apportionment is made. The county auditor, when making his semi-annual apportionment of funds shall retain at each such semi-annual apportionment one-half the amount so apportioned to each township and municipality. Such monies shall be placed in a separate fund, to be known as the 'district health fund.'

When a general health district is composed of townships and municipalities in two or more counties, the county auditor making the original apportionment shall certify to the auditor of each county concerned the amount apportioned to each township and municipality in such county. Each auditor shall withhold from the semi-annual apportionment to each such township or municipality the amount so certified, and shall pay the amounts so withheld to the custodian of the funds of the health district concerned, to be credited to the district health fund. Where any general health district has been united with a city health district located therein, the mayor of the city shall annually on or before the first day of June certify to the county auditor the total amount due for the ensuing fiscal

year from the municipalities and townships in the district as provided in the contract between such city and the district advisory council of the original health district. The county auditor shall thereupon apportion the amount so certified to the townships and municipalities, and withhold the sums so apportioned as herein provided."

It is therefore apparent that a general health district is a separate and distinct department or branch of the state sovereignty and that the legislature has placed no authority, jurisdiction or control over it in the county commissioners.

In reply to your second inquiry as to whether the board of county commissioners has any control over appropriations for county school superintendents, it must be borne in mind that a board of county commissioners is a quasi-corporate body and that as such, has no powers or duties except such as have been granted it by the legislature. See 11 O. J. 332, and numerous authorities cited therein.

The legislature has created another quasi-entity in the case of county school districts, and has placed the powers and duties with respect to the supervision and control of such districts in such bodies. Section 4728, General Code, providing for said board, reads:

"Each county school district shall be under the supervision and control of a county board of education composed of five members, who shall be electors residing in the territory composing the county school district and who may or may not be members of local boards of education. The members of such county board in office when this act goes into effect shall continue in office until their successors are elected and qualified."

The legislature has provided for appointing county boards of education and fixing the salaries of the county superintendent in Sections 4744 and 4744-1, General Code, which sections read as follows:

Section 4744. "The county board of education at a regular meeting held not later than July 20th, shall appoint a county superintendent for a term not longer than three years commencing on the first day of August. Such county superintendent shall have the educational qualifications mentioned in section 4744-4. He shall be in all respects the executive officer of the county board of education, and shall attend all meetings with the privilege of discussion but not of voting."

Section 4744-1. "The salary of the county superintendent shall be fixed by the county board of education to be not less than twelve hundred dollars per year, and shall be paid out of the county board of education fund on vouchers signed by the president of the county board. Half of such salary up to the amount of two thousand dollars shall be paid by the state and the balance by the county school district. In no case shall the amount paid by the state be more than one thousand dollars. The county board may also allow the county superintendent a sum not to exceed three hundred dollars per annum for traveling expenses and may employ an efficient stenographer or clerk for such superintendent. The part of all salaries and expenses paid by the county school district shall be prorated among the village and rural school districts in the county in proportion to the number of teachers employed in each district, but the county board of education must take into consideration and use any funds secured from the county dog and kennel fund or from any other source

and which is not already appropriated before the amount is prorated to the various rural and village districts."

Section 4744-3, General Code, with reference to the payment of the salary of the county superintendent, in so far as material to your inquiry, reads:

"The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the 'county board of education fund.'"

I am, therefore, of the opinion that the county commissioners have no control over any appropriation for a county superintendent.

In reply to your third inquiry, as to whether the county budget commission has the right to cut an appropriation for either officer, previously mentioned, I call your attention to Sections 5625-19 to 5625-28, inclusive, General Code, which, owing to their length, I am not quoting herein. Such sections, in substance, authorize the county budget commission to receive the budget from each taxing authority.

Section 5625-24, General Code, provides:

"The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act (G. C. §§ 5625-1 to 5625-39) for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom."

Section 7575, General Code, provides:

"For the purpose of affording the advantages of a free education to all youth of the state, there shall be levied annually a tax of two and sixty-five hundredths mills, the proceeds of which shall be retained in the several counties for the support of the schools therein. In addition thereto there shall be an 'educational equalization fund' which shall consist of such sums as the General Assembly may appropriate from the general revenue fund."

In my opinion rendered to the Director of Health, under date of December 3, 1929, (Opinions of the Attorney General for 1929, page 1847) I held as stated in the syllabus:

"A budget commission may reduce the amount requested by the general health district board for the compensation of a health commissioner so long as such action does not amount to an abuse of discretion."

However, I must assume from your request that the budget has already been prepared. Your request relates only to the appropriation.

I find no statute purporting to authorize the budget commission to exercise

any control over appropriations made by any board; the functions and duties of the commission are expended when a tax is levied.

Specifically answering your inquiries, I am of the opinion that:

1. The county commissioners have no control over the appropriation for a district health commissioner, even though the territorial limits of the health district within his jurisdiction are co-terminous with the boundaries of the county.
2. The county commissioners have no control over the appropriation for the county school superintendent.
3. The county budget commission has no jurisdiction to cut appropriations made by subdivisions or districts; its authority over taxation ceases when the budget is completed.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4245.

APPROVAL, LEASE FOR RIGHT TO USE FOR BOATHOUSE AND DOCKLANDING, LAND AT PORTAGE LAKES—A. T. DURANT—L. L. DURANT.

COLUMBUS, OHIO, April 13, 1932.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication over the signature of the chief of the bureau of inland lakes and parks of the division of conservation in your department submitting for my examination and approval a certain reservoir land lease in triplicate, executed by the conservation commissioner to A. T. Durant and L. L. Durant of Akron, Ohio. By the lease here referred to, there is leased and demised to the lessees above named the right to use and occupy for boathouse, docklanding and walkway purposes the water front and State land in the rear thereof that lies immediately in front of lot No. 5 of the Fuchs and Gehres Addition, Portage Lakes.

This lease has been properly executed by the conservation commissioner and by said lessee, and upon examination of the terms and provisions of this lease, which is one for a term of fifteen years and providing for an annual rental of six dollars (\$6.00), I find that this lease and the conditions and restrictions therein contained are in conformity with the provisions of section 471 and other sections of the General Code relating to reservoir land leases.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon this lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*