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HEALTH DISTRICT, COMBINED GENERAL—FORMED BY UNION OF GENERAL HEALTH DISTRICT AND CITY HEALTH DISTRICT—RENT ITEM PROPER TO BE BUDGETED BY HEALTH COMMISSIONER IN ANNUAL BUDGET—HEALTH DISTRICT OCCUPYING PRIVATE QUARTERS WHERE RENT MUST BE PAID.

SYLLABUS:

In a combined general health district formed by the union of a general health district and a city health district, the item of rent is a proper item to be budgeted by the health commissioner in his annual budget, where such health district is occupying private quarters where rent must be paid. Opinion 1085, Opinions of the Attorney General, 1949, page 1085, distinguished.

Columbus, Ohio, February 16, 1954

Hon. John S. Moorehead, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“Guernsey County has had since the year 1949, a combined general health district under what is now 3709.07, R. C. At that time a union of the city health district and the general health district was accomplished.

“After the combination was accomplished, the offices of the health district were located in the Guernsey County Court House where they remained until about May, 1952, when the offices were moved to quarters in the Guernsey Memorial Hospital, which is privately owned. From that date to the date of this writing,

the district has paid no rent. The hospital is presently demanding that rent be paid.

“Section 3709.34, R. C., provides that either the Board of County Commissioners or the legislative authority of any city may furnish suitable quarters for any board of health and 1932 OAG 3989 states that this is a mandatory provision upon the municipality under the facts of that particular opinion and holds further, that the health district may not expend its funds to provide itself quarters. Relying on this opinion, the health district has not, until recently, placed any item of rent in their budget.

“Section 3709.07 further provides for a contract to be made between the city and the county, stating the proportion of the expenses of the board of health of the combined districts to be paid by the city and by that part of the district lying outside of the city. I find no other statutory provision under which the county and the city can be brought together concerning the location of the offices of the health district, the amount of rent to be paid by the health district in the event it does not occupy public offices, or the proportion of said rent to be paid by either.

“It would seem that 1932 OAG 3989 has no relevancy to the operation of a combined health district. I request your opinion as to whether the item of rent is a proper item to be budgeted by the health commissioner in his annual budget where there is a combined general health district occupying private quarters where rent must be paid.”

The only provision of Chapter 3709, Revised Code, relating to the quarters to be occupied by a board of health or health department, is found in Section 3709.34, Revised Code, which provides as follows :

“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.”

One of my predecessors, in Opinion No. 3989, Opinions of the Attorney General for 1932, page 106, has held that this provision is mandatory to the extent that a city must furnish such quarters for a board of health of a city health district. Another of my predecessors, in Opinion No. 1085, Opinions of the Attorney General for 1949, page 737, has likewise held that this provision is mandatory, and requires the board of county commissioners to furnish suitable quarters for a board of health of a general health district. It is noted that in neither of the foregoing opinions is a situation comprehended whereby it is necessary to determine whether

either the legislative authority of a city on the one hand, or the board of county commissioners on the other, is required to furnish such quarters in a general health district resulting from a union of a city health district and a general health district formed pursuant to Section 3709.07, Revised Code.

Section 3709.34, *supra*, in and of itself furnishes no indication of the legislative intent in this connection. As a matter of first impression it might be concluded that the obligation to house a combined general health district devolves upon the county commissioners since such a district has “* * * jurisdiction over all or any part of such county * * *.” However, by the same token, the district also has jurisdiction over all of the city, in this instance, and the statute is equally susceptible of the construction that the duty to provide quarters rests with the legislative authority of such city. Consequently any interpretation of the statute which would impose this mandate upon one or the other would appear to be inequitable and the result of an arbitrary choice not justified by the terminology of the statute. At most, in the case of a general health district formed by a union of a city health district and general health district, Section 3709.34, *supra*, can be said to be permissive in character, so as to allow the county commissioners or the legislative authority of the city to furnish quarters if either chooses to do so.

It is also appreciated that by operation of Section 3709.07, Revised Code, the combined health district constitutes a general health district. Consequently a literal application of the holding of Opinion No. 1085, *supra*, which places the onus of providing quarters for a general health district on the county commissioners, would dictate that they furnish such quarters, in the instant case. However, Section 3709.34, *supra*, is barren of any reference to a general health district or city health district and makes the jurisdiction of the board of health or health department the determining factor. The holding of Opinion No. 1085, *supra*, must, therefore, be distinguished to the extent that it is inapplicable to a general health district formed as the result of a union of a city health district and general health district.

The fact that the legislature has not seen fit to provide specifically for such a case indicates strongly to me that it was intended that the matter of quarters and the rental expense thereof should be determined by the mutual agreement required upon the union of a city health district and the general health district. Section 3709.07, Revised Code, specifically provides in

substance that the chairman of the district advisory council and the chief executive of the city “* * * shall enter into a contract for the administration of health affairs in the combined district * * *”, and further provides that “* * * such contract shall state the proportion of the expenses of the board of health or health department of the combined district to be paid by the city and by that part of the district lying outside of the city. * * *” Accordingly, if the contract makes no specific provision for quarters or for the rental thereof, such rent should be considered as an operating expense of the combined general health district and apportioned in the same manner as provided therein for other such expenses. “This rental item is of course subject to the approval of the county budget commission as to amount pursuant to Section 3709.28, Revised Code.”

Accordingly, and in specific answer to your inquiry, it is my opinion that in a combined general health district formed by the union of a general health district and a city health district, the item of rent is a proper item to be budgeted by the health commissioner in his annual budget, where such health district is occupying private quarters where rent must be paid. Opinion No. 1085, Opinions of the Attorney General, 1949, page 1085, distinguished.

Respectfully,
C. WILLIAM O'NEILL
Attorney General.