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GENERAL HEALTH DISTRICT—§3709.28 RC; PROCEDURE FOR ITEMIZED ESTIMATE OF NECESSARY FUNDS — COUNTY BUDGET COMMISSION — NO TRANSFER OF FUNDS — ITEMIZED ESTIMATE MAY INCLUDE NO “UNINCUMBERED BALANCE”—§5705.29 RC.

SYLLABUS:

1. When a general health district has received funds pursuant to the procedure provided in Section 3709.28, Revised Code, the board of health of such district may not expend on any item of expense a greater amount than was designated for that item

in the itemized estimate which was approved by the county budget commission, and such board may not transfer funds from one such item to another.

2. An estimate submitted under Section 3709.28, Revised Code, should include only amounts needed for actual anticipated expense and should include no "unincumbered balance."

3. Any balance remaining in the funds designated for any item of expense due to an over-estimate made in the estimate required by Section 3709.28, Revised Code, should be credited as an unincumbered balance as provided in Section 5705.29, Revised Code, to the several subdivisions concerned in the same proportions as the health district's adjusted "budget" estimate was apportioned among them by the county auditor as provided in Section 3709.28, Revised Code.

4. Having approved the estimate submitted by a board of health of a general health district under the provisions of Section 3709.28, Revised Code, the county budget commission cannot thereafter grant authority to transfer funds designated for one item of expense to funds designated for another.

Columbus, Ohio, July 9, 1957

Hon. G. William Brokaw, Prosecuting Attorney  
Columbiana County, Lisbon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested by the Board of Health of the Columbiana County General Health District to seek an opinion from your office with respect to certain financial and budgetary procedures.

"Section 3709.28 provides that the Board of Health on or before the first Monday in April each year shall estimate in itemized form the amounts needed for current expenses beginning on the first day of January following. The budget is prepared in this County as provided by law and submitted to the Budget Commission. The budget consists of twenty items such as salary of Health Commissioner; salary of Public Health nurse, salary of Clerk No. 1, 2, and 3; salary of Nurse No. 2 and 3; salary of Sanitarian No. 1 and 2; office supplies; emergencies, etc.

"The questions presented by the Board of Health are as follows: (1.) After the budget has been approved by the Board of Health and the Budget Commission, may the Board of Health transfer funds from one item to another, that is, may they transfer money from the item for emergencies into the item for the salary of a clerk, or from an item marked Clerk No. 1 to Clerk No. 2. Further, if an item is set up for salary of Nurse No. 3 and

Nurse No. 3 is not hired, may the salary of other employees or nurses be increased by transferring the money budgeted for the salary of Nurse No. 3. (2) If the budget has been approved and it includes an unincumbered balance, may budgeted items be increased out of such an unincumbered balance. (3.) If the answers to the first two questions are in the negative, may the Board of Health transfer funds from one item in their budget to another by securing the consent of the Budget Commission. (The current Budget Commission does not consist of the same members which approved the budget last year.)”

The pertinent portion of Section 3709.28, Revised Code, reads:

“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 district 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 county budget commission which may reduce any item in such estimate but may not increase any item or the aggregate of all items.

“The aggregate amount as fixed by the commission shall be apportioned by the auditor among the townships and municipal corporations composing the health district on the basis of taxable valuations in such townships and municipal corporations. The board shall certify to the auditor the amount due from the state for the next fiscal year as provided in section 3709.32 of the Revised Code, which shall be deducted from the total of such estimate before an apportionment is made. The auditor, when making his semiannual apportionment of funds, shall retain at each semiannual apportionment one half of the amount apportioned to each township and municipal corporation. Such moneys 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 municipal corporations in two or more counties, the auditor making the original apportionment shall certify to the auditor of each county concerned the amount apportioned to each township and municipal corporation in such county. Each auditor shall withhold from the semiannual apportionment to each such township or municipal corporation the amount certified, and shall pay the amounts withheld to the custodian of the funds of the health district concerned, to be credited to the district health fund.”

Opinion No. 2242, Opinions of the Attorney General for 1925, page 87, held, reading the syllabus:

“The county budget commission has power under Section 1261-40 General Code (Section 3709.28, Revised Code) to reduce any item or items contained in the budget submitted by the county health board, and when the amounts of the several items are so

fixed, the county health board is limited in its expenditure of funds for a given item to the amount so fixed by the budget commission.”

The then Attorney General expressed two reasons for his opinion. One was based on analogy with a section of the budget law which has been since repealed, so that that reason is no longer valid. His second reason was that some effect must be given to the words “may reduce *any item.*” The language of the statute is not to the effect that the budget commissioners can reduce any estimate, but that they may reduce any item. Obviously it would be futile for them to have the power to reduce any item if the board of health could ignore such reduction and transfer funds from one item to another.

I concur in the opinion that sound statutory construction requires that effect be given to every word of the statute, and I affirm and follow Opinion No. 2242, *supra*.

It has been suggested that provisions of the Tax Levy Law, Chapter 5705., Revised Code, and particularly Section 5705.40, Revised Code, which authorizes transfers of funds from one appropriation item to another, require a contrary conclusion. In Opinion No. 1250, Opinions of the Attorney General for 1929, page 1847, the then Attorney General examined the tax levy or budget law and rejected this suggestion. If any provision of Chapter 5705., Revised Code, implies a contrary interpretation of Section 3709.28, Revised Code, it in effect repeals a part of it by implication, and repeals by implication are not favored.

In fact, the estimate of amounts needed for current expenses which is submitted to the county budget commission is not actually a budget. See Opinion No. 1250, Opinions of the Attorney General for 1929, page 1847, *supra*, at page 1848, and 5 Words and Phrases, 862, as supplemented. Neither is it an appropriation. It is, rather, a request, and the powers of the county budget commission with respect thereto are derived specially from the provisions of Section 3709.28, Revised Code, and not from the general provisions of Chapter 5705., Revised Code.

In specific answer to your first question, it is my opinion that when, under Section 3709.28, Revised Code, the county budget commission has approved the itemized estimate of expenses submitted by a general health district, the board of health of such district may not thereafter transfer funds received in consequence of that approval from one item to another.

Turning to your second question, it appears to involve the assumption that the estimate submitted under Section 3709.28, Revised Code, is a budget. But, as I have pointed out, it is not a budget within the meaning of the tax levy law, as set out in Chapter 5705., Revised Code. It is rather an itemized estimate of funds needed to meet the actual current expenses of the next fiscal year, prepared as an aid to the budget commission in the duty of that agency to adjust the budgets of the several subdivisions in each of which a portion of the aggregate of the approved items will be included. As such it could not properly contain any unincumbered balance. Any balance remaining in the funds of a health district at the end of a fiscal year, as the result of an over-estimate in some particular item or items, should be credited, as an unincumbered balance as provided in division (B) (1) of Section 5705.29, Revised Code, to the several subdivisions concerned in the same proportion as the health district's adjusted "budget" estimate was apportioned among them by the county auditor as provided in Section 3709.28, Revised Code; and this is true whether or not such balance results in part from a special levy under Section 3709.29, Revised Code, for any unincumbered balance remaining therefrom, at the end of a fiscal year must be somewhere accounted for in making up the tax levy budget as provided in Section 5705.29, Revised Code. Because such balance will reduce the amounts needed to be raised by taxation within the ten mill limitation, and because the district does not itself prepare a tax levy budget, such diminished need can be reflected only by such proportionate credit to such subdivisions.

As to your third question, the statutes do not provide for continuing supervision by the county budget commission of the funds of a general health district. When the budget commission has performed the duties prescribed by Section 3709.28, Revised Code, it has no further duty or authority with respect to the estimates of expenses or the itemization thereof.

In sum, it is my opinion, and you are advised, that:

1. When a general health district has received funds pursuant to the procedure provided in Section 3709.28, Revised Code, the board of health of such district may not expend on any item of expense a greater amount than was designated for that item in the itemized estimate which was approved by the county budget commission, and such board may not transfer funds from one such item to another.

2. An estimate submitted under Section 3709.28, Revised Code, should include only amounts needed for actual anticipated expense and should include no "uncumbered balance."

3. Any balance remaining in the funds designated for any item of expense due to an over-estimate made in the estimate required by Section 3709.28, Revised Code, should be credited as an unincumbered balance as provided in Section 5705.29, Revised Code, to the several subdivisions concerned in the same proportions as the health district's adjusted "budget" estimate was apportioned among them by the county auditor as provided in Section 3709.28, Revised Code.

4. Having approved the estimate submitted by a board of health of a general health district under the provisions of Section 3709.28, Revised Code, the county budget commission cannot thereafter grant authority to transfer funds designated for one item of expense to funds designated for another.

Respectfully,  
WILLIAM SAXBE  
Attorney General