

**OPINION NO. 83-081****Syllabus:**

1. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a municipality may, but is not required to, furnish office space for a combined general health district formed under R.C. 3709.07.
2. If office space is not furnished to a combined general health district under R.C. 3709.34, the expense of securing such office space is an operating expense of the district and must be apportioned in the same manner as other such expenses are apportioned in the contract creating such district. (1954 Op. Att'y Gen. No. 3499, p. 47 and 1976 Op. Att'y Gen. No. 76-066, approved and followed.)
3. A board of county commissioners may expend funds to repair or maintain a building used by a combined general health district, although such building is owned only in part by the county and in part by a municipality.

**To: John A. Pfefferle, Erie County Prosecuting Attorney, Sandusky, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 2, 1983**

I have before me your request for my opinion concerning the duty of member political subdivisions to provide office space for a combined general health district created pursuant to R.C. 3709.07. The events that precipitated your request and your specific questions are set forth as follows:

In 1979 the City of Sandusky and the Board of Erie County Commissioners purchased a building, under authority of Section 153.61 of the Revised Code, to be jointly used for office space by the City of Sandusky Health Department and the Erie County Board of Health. . . . In 1979 the Erie County Board of Health consisted of all the townships in the county and the cities of Vermilion and Huron, Ohio. Effective January 1, 1983 the cities of Sandusky, Vermilion and Huron, Ohio contracted with the District Advisory Council of the Erie County Health District, under authority of Section 3709.07 of the Revised Code, to form a combined general health district. . . . There is no mention of suitable quarters for this newly created combined general health district in the contract [creating the district]. The newly created combined general health district has occupied as their quarters the building jointly owned by the City of Sandusky, Ohio and the Board of Erie County Commissioners since January 1, 1983. The City of Sandusky, Ohio at this time wishes to give up its one-half ownership of the building presently housing the combined general health district and sell its interest to the Board of Erie County Commissioners.

In reviewing Section 3709.34 of the Revised Code and the following Attorney General Opinions: 1954 Op. Att'y Gen. No. 3499, 1972 Op. Att'y Gen. No. 72-098, 1976 Op. Att'y Gen. No. 76-066 and 1980 Op. Att'y Gen. No. 80-086, the following questions have arisen:

1. Does the City of Sandusky, Ohio and/or the Cities of Vermilion or Huron, Ohio have any mandatory duty to provide suitable quarters to the Erie County Combined General Health District?
2. Does the Board of Erie County Commissioners have any mandatory duty to provide suitable quarters to the Erie County Combined General Health District?
3. While the present situation continues can the Board of Erie County Commissioners make any expenditures of money from their general fund for the maintenance and capital improvement of the building housing the Erie County Combined General Health District where such maintenance and capital improvements will benefit not only the county but the City of Sandusky?
4. Finally, should the City of Sandusky, Ohio initiate a partition proceeding and the court of common pleas order a sale of the aforesaid building, who legally would have responsibility for providing suitable quarters to the Erie County Combined General Health District?

The formation of a combined general health district is authorized by R.C. 3709.07, which states, in pertinent part:

Except as provided in section 3709.071 of the Revised Code, when it is proposed that one or more city health districts unite with a general health district in the formation of a single district, the district advisory council of the general health district shall meet and vote on the question of union. . . . The legislative authority of each city shall likewise vote on the question. . . . When the majority of the district advisory council and the legislative authority have voted affirmatively, the chairman of the council and the chief executive of each city shall enter into a contract for the administration of health affairs in the combined district. 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 or cities and by the original general health district. The contract may provide that the administration of the combined district shall be taken over by either the board of health or health department of one of the cities, by the board of health of the general health district, or by a combined board of health. . . .

In answer to your questions, R.C. 3709.34 specifically addresses the provision of suitable quarters for a board of health or health department. It provides: "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." Pursuant to R.C. 3709.07, the administration of a combined general health district must be vested in either a board of health or a health department. At the time a combined district is created the member political subdivisions must determine that the district will be administered by "the board of health or health department of one of the cities, by the board of health of the general health district, or by a combined board of health." R.C. 3709.07. Accordingly, R.C. 3709.34 encompasses the entity responsible for the administration of health affairs in a combined general health district.

R.C. 3709.34 has been almost uniformly interpreted by my predecessors to be mandatory. One of my predecessors held in 1932 Op. Att'y Gen. No. 3989, vol. I, p. 106, that a city must furnish quarters for a board of health of a city health district. Another of my predecessors held, in 1949 Op. Att'y Gen. No. 1085, p. 737, that a

board of county commissioners must furnish suitable quarters for a board of health of a general health district. Finally, my immediate predecessor held in 1972 Op. Att'y Gen. No. 72-098, that a board of county commissioners must provide suitable quarters for a county health department. Cf. 1980 Op. Att'y Gen. No. 80-086 (board of county commissioners must provide and pay for utilities used by the county general health district). The analysis relied upon in each of these opinions is that the word "may" is generally regarded as imperative when it appears in a statute conferring authority to perform an act which the public interest demands. See, e.g., The Pennsylvania Rd. Co. v. Porterfield, 25 Ohio St. 2d 223, 267 N.E.2d 792 (1971).

The sole exception to this interpretation of R.C. 3709.34 is found in 1954 Op. Att'y Gen. No. 3499, p. 47 wherein it is suggested at p. 49:

At most, in the case of a general health district formed by a union of a city health district and general health district, [R.C. 3709.34] 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.

This comment was the result of my predecessor's belief that R.C. 3709.34 in and of itself furnishes no indication of a legislative intent to require either the legislative authority of a city or the board of county commissioners to furnish quarters in a combined district formed pursuant to R.C. 3709.07. Consequently, my predecessor reasoned that "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." 1954 Op. No. 3499 at p. 49.

It should be noted, however, that the foregoing comments in 1954 Op. No. 3499 were only prefatory to the precise issue presented and resolved therein, which was whether rent is a proper item to be budgeted by a health commissioner in his annual budget for a combined general health district where such health district is occupying private quarters where rent must be paid. Notwithstanding its characterization of R.C. 3709.34 as permissive in the case of a combined general health district, 1954 Op. No. 3499 concluded that rent is a proper item for inclusion in the budget of a combined district and should be considered an operating expense and apportioned between the city or cities and the parts of the district lying outside of the city as other such expenses. See 1976 Op. Att'y Gen. No. 76-066 (a combined general health district may provide for the rental of quarters by virtue of a contract signed pursuant to R.C. 3709.07 and R.C. 3709.28; 1954 Op. No. 3499, affirmed and followed). This conclusion implicitly recognizes that each of the cities as well as the political subdivisions which comprised the original general health district<sup>1</sup> has a duty to provide suitable quarters to a combined general health district formed under R.C. 3709.07. This duty to provide suitable quarters for a combined general health district may be met in one of two ways. Either the board of county commissioners or the legislative authority of one of the member municipalities may furnish quarters for the combined general health district. R.C. 3709.34. Alternatively, the cost of furnishing suitable quarters must be considered as an operating expense of the combined district and apportioned in the same manner as other such expenses.

The allocation of the budget, and the proportionate shares of expenses to be borne by, respectively, the cities and the original general health district in providing quarters for the combined general health district, are matters to be

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<sup>1</sup> R.C. 3709.01 provides, in part: "The township and villages in each county shall be combined into a health district and shall be known as a general health district."

resolved by contract pursuant to R.C. 3709.07.<sup>2</sup> It is my understanding that a contract in fact exists, and that it does include provisions relating to the allocation of the budget of the Erie County Combined General Health District. The contracting parties are, of course, free to alter or amend their agreement or to contract further in order to clarify the matter of provision of suitable quarters.

Consequently, in answer to your questions numbered one, two, and four, it is my opinion that the Cities of Sandusky, Huron, and Vermilion, and the Board of Erie County Commissioners, all may, but are not required to, provide suitable quarters for the Erie County Combined General Health District. If no one of the subdivisions elect to furnish such quarters, pursuant to R.C. 3709.34, the expense of providing such quarters must be allocated by contract pursuant to R.C. 3709.07.

I turn now to your third question which concerns the authority of the Board of Erie County Commissioners to expend funds to maintain or improve a building housing the combined general health district. It is my understanding that the Erie County Commissioners wish to repair the roof of the building which houses the Erie County Combined General Health District. As you have informed me in your letter requesting my opinion, the county commissioners presently own only a one-half interest in the building.

It is well settled in Ohio that a board of county commissioners is a creature of statute and as such, possesses only those powers either expressly granted by statute or necessarily implied from its express powers. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). I am not aware of any statute which expressly grants to a board of county commissioners the authority to expend funds for maintenance and capital improvements of a building housing a combined general health district. However, such authority appears to be implied from the convergence of several statutes.

R.C. 307.02 gives a board of county commissioners broad powers to acquire and maintain property used for county purposes. It provides, *inter alia*, that a board of county commissioners may "construct, enlarge, improve, rebuild, equip, and furnish. . . county offices" or "other necessary buildings." It is, therefore, clear that the board would possess the authority to expend funds for maintenance and capital improvements of one of its own buildings.

The fact that the county is only a part owner of the building and the fact that the improvement will benefit the City of Sandusky as well are immaterial. County improvements may be constructed and maintained by the county even though they may be used by a municipality or may directly benefit only a part of a county. State ex rel. Speeth v. Carney, 163 Ohio St. 159, 126 N.E.2d 449 (1955). Moreover, a county is expressly authorized to furnish quarters for a combined general health district located in a county building. R.C. 3709.34. See also R.C. 307.03 (a board of county commissioners is authorized to provide space in a building under its control to an organization that performs a public purpose); R.C. 3709.283 (a board of county commissioners may give financial assistance to, and participate in, any health program conducted by a city or general health district).

Necessarily implied from these grants of statutory authority is the discretionary power to expend county funds for maintenance and repair and for

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<sup>2</sup> R.C. 3709.28 also addresses the apportionment of current expenses of general health districts. It provides, in pertinent part:

When any general health district has been united with or has contracted with a city health district located therein, the chief executive 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 municipal corporations and townships in the district as provided in the contract between such city and the district advisory council of the original general health district.

capital improvements to a county building made available for a combined general health district, even though such building is not exclusively owned by the county. As my predecessor noted in 1981 Op. Att'y Gen. No. 81-033, "[w]hether a public purpose exists, and whether the actions taken are designed to achieve such a purpose are matters within the discretion of the particular administrative authority and 'will not be rejected or reversed by the court unless manifestly arbitrary and unreasonable.'" *Id.* quoting from *State ex rel. Gordon v. Rhodes*, 156 Ohio St. 81, 97, 100 N.E.2d 225, 233 (1951). See also 1982 Op. Att'y Gen. No. 82-006.

Accordingly, it is my opinion that if the board of county commissioners determines by resolution that it wishes to expend funds to maintain or improve a building partially owned by the county, and which has been made available for a public purpose, it has the authority to expend such funds pursuant to R.C. 307.02.

It is, therefore, my opinion, and you are so advised, that:

1. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a municipality may, but is not required to, furnish office space for a combined general health district formed under R.C. 3709.07.
2. If office space is not furnished to a combined general health district under R.C. 3709.34, the expense of securing such office space is an operating expense of the district and must be apportioned in the same manner as other such expenses are apportioned in the contract creating such district. (1954 Op. Att'y Gen. No. 3499, p. 47 and 1976 Op. Att'y Gen. No. 76-066, approved and followed.)
3. A board of county commissioners may expend funds to repair or maintain a building used by a combined general health district, although such building is owned only in part by the county and in part by a municipality.