OPINION NO. 74-023

Syllabus:

A board of health of a general health district has no power to license and regulate the operation of a rendering plant, or the collection of raw rendering materials, licensed by the department of agriculture under R.C. Chapter 953. The board may, however, require the registration of such businesses and charge a nominal fee adequate to cover its expense in recording such registration.

To: Joesph J. Baronzzi, Columbiana County Pros. Atty., Lisbon, Ohio
By: William J. Brown, Attorney General, March 22, 1974

I have before me your request for my opinion of whether a board of health of a general health district may charge a fee for the operation of a rendering business or the collection of raw rendering materials, which businesses are licensed by the state department of agriculture under R.C. Chapter 953.

The general purpose of the fee, and the nature of the board of health's regulation of the business, may be inferred from the materials enclosed with your letter. Section 21 of the board of health's rules requires a permit for the "collection and removal, for remuneration, of the contents of privy vaults, or sewage tanks, swill, garbage or offal * * *." The section further provides as follows:

> "The permits shall be issued for such periods and such times as deemed advisable by the Health Commissioner. The permit shall state the conditions under which the material shall be removed

> and disposed of. Any and all permits may be revoked at any time at the discretion of the Health Commissioner. Annual fee for permit for scavengers and garbage collectors shall be Ten Dollars ($10.00)."

By implication, the board claims power to specify standards for the operation of a collection business, to inspect to ensure compliance, and to revoke the permit in case of noncompliance. Only the collection of raw rendering materials is expressly covered, not the operation of a rendering plant. Section 22 of the board's rules refers to "a [rendering] plant operating under license of the Ohio Department of Agriculture", and makes no mention of a fee or regulations.

Therefore I conclude that the board is not attempting to regulate such plants.

R.C. Chapter 953, which requires the licensing of rendering plants by the department of agriculture, provides detailed regulations for the operation of such business. In addition, R.C. 953.27 grants the director of agriculture power to promulgate regulations. R.C. 953.21 provides, inter alia, the following definitions:

> "(C) 'Loading platform" means any place operated by a licensee for loading dead animals, or parts thereof, onto trucks to take them to a rendering plant.
>
> * * * * * * * * *
>
> "(E) 'Raw rendering material' means any body, part of a body, or product of a body, or any dead animal which is unwholesome, condemned, inedible, or otherwise unfit for human consumption.
>
> "(F) 'Rendering plant' means any premise where raw rendering materials are converted into fats, oils, feeds, fertilizer, and other products."

An application for a license must contain, inter alia, "a detailed statement of the method which the applicant intends to use to dispose of, pick up, render, or collect raw rendering material." R.C. 953.23(B)(3). Plant sanitation, disposal requirements, and sale and use of rendering material are regulated in detail. R.C. 953.24, 953.25, 953.26. The method of conveyance is discussed as follows in R.C. 953.29:

> "(A) No raw rendering material shall be conveyed unless the means of conveyance is so constructed that no drippings or seepings can escape from such means of conveyance and the raw rendering material is covered.
>
> "(B) Each means of conveyance shall be thoroughly cleaned with steam, or such other method approved by the department of agriculture, at least once each day of its use for the conveyance of raw rendering material."

R.C.953.28 grants power of inspection to the department of agriculture's representatives, as follows:

> "(A) Any authorized representative of the director of agriculture who has good reason to suspect that any premises or means of conveyance contains raw rendering material shall have free access to those premises or that means of conveyance at any reasonable time.
>
> "(B) The department of agriculture shall inspect each place or means of conveyance licensed under section 953.23 of the Revised Code at least once each year and may inspect it as often as the department finds necessary. The department shall furnish a report of the findings of each inspection to the licensee."

Thus, it can readily be seen that the operation of a rendering plant, and collection of raw rendering materials, are licensed and regulated in detail under the provisions of R.C. Chapter 953. The director of agriculture may promulgate even more detailed regulations.

Boards of health arguably have the power to regulate the operation of rendering plants and the collection of raw rendering materials, under their broad power to prevent, abate, or suppress nuisances (R.C. 3709.21). R.C. 3709.22 authorizes the board of health of a general or city health district to provide for inspections and abatement of nuisances which are dangerous to the health or comfort, and also to take steps necessary to protect the public health and prevent diseases. Garbage has been held to be a nuisance, and boards of health are considered to have the power under the above sections to make rules and regulations relating to it. See Weber v. Board of Health, 148 Ohio St. 389 (1947); State v. Board of Health, 109 Ohio App. 57 (1959); Opinion No. 2679, Opinions of the Attorney General for 1953.

The central question here is whether the General Assembly, by charging the department of agriculture with the power and duty to regulate such businesses and providing detailed standards therefor, has pre-empted this field of regulation and thereby deprived boards of health of any implied power to enter into it.

In Opinion No. 1017, Opinions of the Attorney General for 1957, my predecessor concluded that boards of health as well as the state water resources board have power to license water well drillers. The water resources board's power to regulate is based upon a statute which authorizes regulations "to prevent the contamination of the underground waters of the state." G.C. 408-3, now R.C. 1521.04. The power of the board of health is based upon R.C. 3709.21 and 3709.22, discussed previously. The then Attorney General decided that the two boards have concurrent jurisdiction to regulate, because their regulations are for different purposes. He analogized to Opinion No. 785, Opinions of the Attorney General for 1946, which advised that both the division of conservation and natural resources and the department of health could take action to correct the pollution of a stream or lake which injures or kills wild animals. Clearly, these two agencies regulate for different purposes, one to protect wild animals, and the other to protect the public health.

However, this reasoning is less appropriate in the case considered by my predecessor in Opinion No. 1017, supra. The purpose of the water resources board in preventing contamination of underground water is basically to protect the public from impure water, which is quite similar to the purpose of boards of health in preventing the contamination of underground water. Hence, I question whether there is enough difference of purpose to justify concurrent jurisdiction of boards of health, although I do not express an opinion on that question since it is not before me.

In the instant case, the reasoning of Opinion No. 785, supra, is clearly inapplicable. The detailed provisions of R.C. Chapter 953. have the same purpose as would regulations of the board of health, that is, to protect the public from the danger of exposure to rendering materials, whether through their food, their water, the air, or any other medium by which contamination could spread. The General Assembly having provided detailed requirements for the operation of rendering plants and the collection of raw rendering materials, and for inspection and licensing by the department of agriculture, further regulation by a board of health would either duplicate the department of agriculture's efforts or conflict with them. I can see no difference in purpose which would justify regulation by a second agency.

Analogous to the instant case is Opinion No. 978, Opinions of the Attorney General for 1964. That Opinion advised that boards of health have no power to require approval of plans and specifications for sewage treatment works, public water supply facilities, and garbage and refuse disposal plants and facilities, when the state board of health has express authority to approve such plans. My predecessor spoke of a "clash of authority between two boards clothed with the same discretionary power." (p. 2-155). Here, also it is unlikely that the legislature intended two different boards to have power to prescribe standards and issue permits to operate rendering businesses, for the protection of the public health, and to evaluate compliance with such standards. Note that, since the Code speaks to the collection of raw rendering materials as well as to operation of a rendering plant, the board of health has no authority to regulate such collection or to require a permit for it.

I advised recently in Opinion No. 74-014, Opinions of the Attorney General for 1974, that city and general health districts may issue more stringent regulations than the sanitary regulations of the Public Health Council. That Opinion discussed regulations on matters which are within the jurisdiction of the boards of health and Public Health Council; while the instant case involves a matter specifically committed to the jurisdiction of the Department of Agriculture. Hence there is no conflict between my decisions in these cases.

The power of a board of health is limited to merely requiring registration of those who collect raw rendering materials or operate rendering plants within its jurisdiction. In a similar situation, my predecessor concluded that a board of health can require the registration of plumbers, even though the power to

license and regulate plumbers was denied to such boards in Wetterer v. Board of Health, 167 Ohio St. 127 (1957). Opinion No. 1462, Opinions of the Attorney General for 1960. My predecessor stated with respect to this power at page 403, as follows:

> "In arriving at my conclusion herein, I wish to make it clear that I interpret 'registration' to mean the mere listing of the names of persons who are engaging in the business of plumbing and that the regulation would not attempt to set up any qualifications for registration. That is, any person who wished to register could do so by merely asking that his name be put on the list and by paying the fee. Regarding a fee for registration, I believe that a reasonable fee could be charged and that a fee which would cover the costs involved would be reasonable."

By analogy, I conclude that the board of health can require collectors of rendering materials to register with it. Certainly the board has a legitimate interest in knowing of any rendering plants and collectors operating in its jurisdiction. Nor would such registration requirement result in a clash of discretionary authority, because the board of health has no power to regulate or license the operation of a rendering plant or collection of raw rendering materials. The fee it could charge for registering such businesses would have to be nominal, because such registration would involve nothing more than a list of names and addresses.

In specific answer to your question, it is my opinion and you are so advised that a board of health of a general health district has no power to license and regulate the operation of a rendering plant, or the collection of raw materials, licensed by the department of agriculture under R.C. Chapter 953. The board may, however, require the registration of such businesses and charge a nominal fee adequate to cover its expenses in recording such registration.