

**OPINION NO. 92-013****Syllabus:**

1. Pursuant to R.C. 3709.02 and R.C. 3709.03, the district advisory council of a general health district that is not combined with any other health district under R.C. 3709.07-.071 or R.C. 3709.10 may appoint a physician who operates a private practice within the geographic boundaries of the general health district, but who does not reside within the geographic boundaries of the district, to serve on the district board of health, provided such appointment is made with due regard to equal representation of all parts of the district. (1942 Op. Att'y Gen. No. 4966, p. 211 and 1930 Op. Att'y Gen. No. 2603, vol. III, p. 1718 (syllabus, paragraph two) overruled on the basis of statutory amendment).

2. Pursuant to R.C. 3709.02, the district board of health may not appoint a physician who does not reside within the geographic boundaries of a general health district to serve on the district board of health in order to temporarily fill a vacancy created more than ninety days before the annual meeting of the district advisory council.

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**To: James A. Philomena, Mahoning County Prosecuting Attorney, Youngstown, Ohio**

**By: Lee Fisher, Attorney General, March 31, 1992**

You have requested an opinion regarding the qualifications of members of boards of general health districts. Your specific request, as supplemented, asks whether a physician who does not reside within the geographic boundaries of the general health district, but does operate a private practice within the district, can be appointed to serve on the district board of health by the district advisory council.

#### **Appointments To A General Health District Board**

A general health district is composed of the townships and villages in a county. R.C. 3709.01. The qualifications and appointment procedures for members of the board of health of such general health districts are governed by R.C. 3709.02 and R.C. 3709.03.<sup>1</sup> Pursuant to R.C. 3709.02, the board of health is composed of five members who serve for five year terms, staggered in such a way that one term expires each year. A district advisory council annually appoints an individual to a new five year term, pursuant to R.C. 3709.03(B), which states:

At its annual meetings the district advisory council shall appoint one member of the board of health. One member of the board of health shall be a physician. *Appointments shall be made with due regard to equal representation of all parts of the district.* (Emphasis added.)

R.C. 3709.02 provides for the filling of in-term vacancies, as follows:

A vacancy in the membership of the board shall be filled in like manner as an original appointment and shall be for the unexpired term. When a vacancy occurs more than ninety days prior to the annual meeting of the district advisory council provided for in [R.C. 3709.03(A)], the remaining members of the board may select a *resident of the district* to fill such vacancy until such meeting. (Emphasis added.)

Pursuant to these statutes, both original appointments and appointments to fill in-term vacancies are made by the district advisory council at its annual meeting. Should an in-term vacancy occur more than ninety days prior to the annual meeting, R.C. 3709.02 authorizes the general health district board to make a temporary appointment. The language of R.C. 3709.02 expressly limits the general health district board to selecting a resident of the district when making a temporary appointment. No such express restriction appears, however, with respect to original appointments made by the district advisory council, nor by extension, with respect to appointments made by the district advisory council to fill in-term vacancies.

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<sup>1</sup> The qualifications and appointment procedures for board members of various types of combined general health districts are governed by the provisions of R.C. 3709.07, 3709.071, and R.C. 3709.10. Upon inquiry to the Department of Health, a member of my staff has determined that the general health district involved in your question is not a combined district. I do not, therefore, consider here whether members of the board of health of any type of combined general health district must be residents of their district.

Rather, R.C. 3709.03(B) simply requires that the district advisory council make such appointments "with due regard to equal representation of all parts of the district."

#### Equal Representation Requirement of R.C. 3709.03

As a general matter, the concept of representation does not, in and of itself, require that a representative be a resident of the geographic area being represented. If this were true, there would be no need for the many statutes that impose express residency requirements on various elected and appointed officials who represent designated geographic areas. *See, e.g.*, R.C. 3.15 (members of the general assembly, judges, elected officers of courts, elected officers of political subdivisions, members of municipal legislative authorities who represent specific wards, members of boards of education of city school districts who represent specific subdistricts); R.C. 519.13 (appointees to township boards of zoning appeals). *See generally State ex rel. Jeffers v. Sowers*, 171 Ohio St. 295, 299, 170 N.E.2d 428, 430 (1960) ("[t]he decided weight of authority supports the view that residence within the district or other political unit for which he is elected or appointed is not a necessary qualification of an officer or candidate, in the absence of an express statutory or constitutional provision requiring such residence") (citation omitted). To represent simply means "to act or stand in place of; be an agent,...to speak and act for by duly conferred authority," and a representative is "a person duly authorized to act or speak for another." *Webster's New World Dictionary* 1206 (2nd college ed. 1984); *see also Black's Law Dictionary* 1301 and 1302 (6th ed. 1990).

The requirement of R.C. 3709.03(B) that appointments be made "with due regard to equal representation of all parts of the district" recognizes that various parts of a general health district may have different health concerns. The boundaries of a general health district are set by artificial political units and, therefore, do not necessarily reflect a commonality of health needs and interests among all of the district's inhabitants. The apparent purpose of R.C. 3709.03(B) is to insure that the general health district board, in the aggregate, is composed of persons qualified to bring the concerns of the entire district before the board and to give balanced consideration to the needs of all parts of the district. Viewed in this light, a physician who operates a private practice within the district, but does not reside therein, may be as qualified to represent the district or part of the district in which that individual works as a physician who does reside there.

#### Prior Law

Prior Attorney General opinions construed substantially identical language in G.C. 1261-17 and G.C. 1261-18, the statutory predecessors of R.C. 3709.02 and R.C. 3709.03, as requiring that a member of the general health district board be a resident of the district, whether appointed by the board or by the district advisory council. *See* 1942 Op. Att'y Gen. No. 4966, p. 211; 1930 Op. Att'y Gen. No. 2603, vol. III, p. 1718 (syllabus, paragraph two). While 1930 Op. No. 2603 noted that there was no express requirement that an originally appointed board member reside in the district, my predecessor determined that the equal representation requirement created "an inference that a member of the general health district board should be a resident of the district" (emphasis added). *Id.* at 1721; *accord* 1942 Op. No. 4966 at 212. This inference, however, rested not only upon the equal representation language, but also upon the language of uncodified section 2 of the Griswold health act, 1919 Ohio Laws, Part II, 1085, 1092-93 (H.B. 633, eff. Jan. 2, 1920),<sup>2</sup> which stated, in part, that "[v]acancies in boards of health in general health districts caused by non-residence shall be filled as provided by this act for other vacancies." 1930 Op. No. 2603 at 1721-22; *accord* 1942 Op. No. 4966 at 212-13.

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<sup>2</sup> Although uncodified, this section appeared in Page's General Code as [Sec. 1261-40a]. The brackets indicate a number assigned by the editors, rather than by the General Assembly or the Attorney General. *See* The Complete Ohio General Code, preface (Anderson, Page's, desk edition, 1930); *see also* 1930 Op. Att'y Gen. No. 2603, vol. III, p. 1718, 1721 (noting that G.C. 1261-40(a) appeared in Page's edition of the General Code but not in Throckmorton's edition).

At the time, other language appeared in G.C. 1261-18 that further supported the inference of a residency requirement. G.C. 1261-18 set forth a requirement that each municipality in the general health district was entitled to one representative on the board for each fifth of the population of the entire district included in the municipal population. 1919 Ohio Laws, Part I, 236, 237 (H.B. 211, eff. Jan. 1, 1920). Construing this requirement, another of my predecessors suggested that residents of a municipality within a general health district could not be appointed to more positions on the board than determined under that formula. 1933 Op. Att'y Gen. No. 817, vol. I, p. 702; *see also* 1923 Op. Att'y Gen. No. 200, vol. I, p. 146, at 148. Inherent in the reasoning of both opinions is the assumption that a municipal resident on the board could be considered a representative only of the municipality and not of the unincorporated areas of the district. Thus, based on the imposition of a formula for determining the number of municipal representatives, these two opinions implied a requirement that a representative be a resident of the particular part of the district he represented.

The General Assembly, however, has subsequently removed the requirement that municipalities shall be entitled to a certain number of representatives based upon population, 1975-1976 Ohio Laws, Part I, 593, 593-94 (Am. S.B. 200, eff. Aug. 13, 1976), and the uncodified language of section 2 of the Griswold health act referring to "vacancies...caused by non-residence," 1949-1950 Ohio Laws 202, 204 (Am. S.B. 119, approved May 26, 1949) (uncodified). Thus, the parts of the statutory scheme that most directly supported the inference of a residency requirement no longer exist. Only the language requiring the district advisory board to make appointments "with due regard to equal representation of all parts of the district" remains, recodified now in R.C. 3709.03(B).

As discussed previously, residency as a qualification for appointment to a district board of health is neither inherent in nor necessarily implied by the concept of equal representation articulated in R.C. 3709.03(B). Additionally, residency is not now, and never has been, an express qualification for appointments made by the district advisory council under either R.C. 3709.03 or R.C. 3709.02. Although past Attorney General opinions inferred a residency requirement from the overall legislative scheme, the subsequent legislative amendments of the general health district statutes have, in my opinion, significantly undermined the reasoning of those opinions. Based on the legislative amendments and the current language of the statutes, I discern no compelling reason to require that an individual reside within a general health district in order to be appointed to the district board of health by the district advisory council, and I hereby overrule 1942 Op. No. 4966 and syllabus paragraph two of 1930 Op. No. 2603.

### Conclusion

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

1. Pursuant to R.C. 3709.02 and R.C. 3709.03, the district advisory council of a general health district that is not combined with any other health district under R.C. 3709.07-.071 or R.C. 3709.10 may appoint a physician who operates a private practice within the geographic boundaries of the general health district, but who does not reside within the geographic boundaries of the district, to serve on the district board of health, provided such appointment is made with due regard to equal representation of all parts of the district. (1942 Op. Att'y Gen. No. 4966, p. 211 and 1930 Op. Att'y Gen. No. 2603, vol. III, p. 1718 (syllabus, paragraph two) overruled on the basis of statutory amendment).
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