

OPINION NO. 78-009**Syllabus:**

A health district created pursuant to R.C. 3709.01 is not subject to the imposition of the tax imposed by R.C. 3905.36 on an association, company or corporation that purchases insurance from an insurer not authorized to do business in this state.

To: Joseph R. Grunda, Lorain County Pros. Atty., Elyria, Ohio
By: William J. Brown, Attorney General, March 15, 1978

I have before me your request for my opinion as to whether a health district is required, pursuant to R.C. 3905.36, to pay a five percent tax on an insurance premium due to the fact that the insurance was purchased from a company not authorized to do business in the State of Ohio.

R.C. 3905.36, which imposes a tax on firms dealing with unauthorized foreign insurers, provides in part as follows:

Every insured association, company, or corporation who enters directly or indirectly into any agreements with any insurance company, association, individual, firm, underwriter, or Lloyd, not authorized to do business in this state . . . shall . . . pay to the superintendent [of insurance] a tax of five percent of such premium, for

assessment, or other consideration. All taxes collected under this section by the superintendent shall be paid by him, upon the warrant of the auditor of state, into the general fund of the state . . .

R.C. 3905.36 expressly exempts certain insurers and certain transactions from the imposition of the tax. R.C. 3905.36 (A) through (D). You indicate in your letter, however, that the Department of Insurance has determined that the health district does not qualify for any of these exemptions and you do not challenge this determination. I shall, therefore, accept the department's determination without further consideration of the exemptions.

The applicability of the statute is, however, further restricted in that the tax must be imposed only on an association, company or corporation that purchases insurance from an insurer not authorized to do business in this state. Since the terms association, company and corporation are not defined for the purposes of R.C. 3905.36, I am directed by R.C. 1.43 to construe them according to their common usage.

The term corporation is commonly used to mean a body of individuals united as a single separate entity, chartered by statute, with the power to maintain perpetual succession and to do corporate acts. Dartmouth College v. Woodward, 17 U.S. 518 (1819). Studebaker Corp. v. Allied Products, 256 F. Supp. 173 (D.C. Mich., 1966). An association is a body of persons organized without a charter but having the general form and mode of procedure of a corporation. In re Midwest Athletic Co., 161 F.2d 1005, 1008 (1947). Company is an association of a number of individuals for the purpose of carrying on a legitimate business. Bradley Fertilizer Co. v. South Pub. Co., 23 N.Y.S. 675 (1893). Company and corporation are commonly used as interchangeable terms. Goddard v. Chicago & N.W. Ry. Co., 202 Ill. 362, 66 N.E. 1066, 1068 (1903).

Health districts are established pursuant to R.C. 3709.01, which provides in part as follows:

The state shall be divided into health districts. Each city constitutes a health district and shall be known as a "city health district."

The townships and villages in each county shall be combined into a health district and shall be known as a "general health district."

A health district created pursuant to R.C. 3709.01 is an agency of the state. State ex rel. Mowrer v. Underwood, 137 Ohio St. 1 (1940). The term corporation does not generally encompass subdivisions and agencies of the state. Bazzoli v. Larson, 40 Ohio App. 321 (1931) (A county is not a corporation); Pacific Fruit & Produce Co. v. Oregon Liquor Control Division, 41 F. Supp. 175 (D.C. Or., 1941) (Liquor Control Commission is a governmental body not a corporation); People v. Dunn, 255 Ill. 289, 99 N.E. 577 (1912) (State Board of Health is a branch of state executive department and is neither a corporation or association). A health district is not, therefore, a corporation, company or association as these terms are construed according to common usage.

Thus, it is my opinion and you are so advised that a health district created pursuant to R.C. 3709.01 is not subject to the imposition of the tax imposed by R.C. 3905.36 on an association, company or corporation that purchases insurance from an insurer not authorized to do business in this state.