

2-277

2008 Opinions

OAG 2008-026

OPINION NO. 2008-026

Syllabus:

2008-026

1. The board of health of a general health district has the authority to dispose of the district's personal property that is obsolete, unfit for use, or no longer needed by the district.
2. Neither R.C. 307.12 nor other statutory provision prescribes a method for disposing of a general health district's obsolete, unfit, or unneeded personal property. Therefore, the board of health of a general health district must, in the reasonable and objective exercise of its discretion, promulgate a policy for determining when personal property is obsolete, unfit for use, or no longer needed by the district, and establish an appropriate process for disposing of such property.
3. The proceeds from the sale of a general health district's personal property must be deposited in the district health fund established pursuant to R.C. 3709.28.

To: Michael M. Ater, Ross County Prosecuting Attorney, Chillicothe, Ohio
By: Nancy H. Rogers, Attorney General, July 31, 2008

You have requested an opinion about the authority of a board of health of a general health district to sell obsolete personal property. You ask whether there are restrictions on the board's ability to sell such property; you also ask into which fund proceeds from the sales should be deposited. You state that the health district would like to sell a truck that is worth about fifteen thousand dollars and various office supplies that are worth about one thousand dollars.

Authority of a Board of Health to Dispose of Obsolete Personal Property

The board of health of a general health district is a creature of statute and thus has only those powers that are conferred by statute, either expressly or by necessary implication.¹ 2006 Op. Att'y Gen. No. 2006-044; 1989 Op. Att'y Gen. No.

¹ As explained briefly in 1995 Op. Att'y Gen. No. 95-030 at 2-149:

Pursuant to R.C. 3709.01, each city in the state constitutes a city health district, and the townships and villages in each county constitute a general health district. *Id.* R.C. 3709.01 additionally authorizes the voluntary combination of a general health district with city or other general health districts in the manner provided in R.C. 3709.07, R.C. 3709.071, or R.C. 3709.10. The resulting combined districts are also designated as general health districts. *See* R.C. 3709.07 (authorizing the union of a general health district with one or more city health districts, and stating that "[t]he combined district shall constitute a general health district"); R.C. 3709.071 (providing for an initiative petition for combining a general health district with one or more city health districts and resolution of the issue by popular vote on "the union of such districts into a single general health district"); R.C.

89-032. A board of health has no express statutory authority to acquire or dispose of personal property. *Cf.* R.C. 3707.55(A) (“[a] board of health of a general health district may acquire, convey, lease, or enter into a contract to purchase, lease, or sell real property for the district’s purposes”). However, it has “long been established that a board of health may, as an incidental power, acquire and hold such property as is necessary to the performance of its statutory duties.” 1989 Op. Att’y Gen. No. 89-032 at 2-133. *See* 1959 Op. Att’y Gen. No. 935, p. 639 (a board of health has the implied authority to purchase or rent motor vehicles for the use of its employees in the performance of their official duties); 1925 Op. Att’y Gen. No. 2995, p. 761 (syllabus) (although there is no statute expressly authorizing a district board of health to purchase an automobile for the use of its employees, such authority is “reasonably implied,” “where conditions are such that the successful, economical and efficient performance of the board’s duties, which are expressly imposed by statute, requires such a purchase”).

A board of health of a general health district also has the implied authority to dispose of property when it becomes obsolete, unfit for use, or otherwise no longer needed by the district. *See* 1984 Op. Att’y Gen. No. 84-054 at 2-179 (“the power [of a county board of mental retardation and developmental disabilities] to dispose of personal property may be implied if it is integrally related to an express duty of the board”); 1959 Op. Att’y Gen. No. 935, p. 639, 643 (“[w]hile there is no direct authority for the board of health to dispose of automobiles that it now owns,

3709.10 (authorizing the combination of two to five contiguous general health districts, and stating that “[w]hen such union is completed, such district shall constitute a general health district”). Thus, the term “general health district,” as used in statute, encompasses both “single” general health districts and combined general health districts . . . *See* 1980 Op. Att’y Gen. No. 80-087 at 2-339 (“a statute which applies to general health districts is equally applicable to health districts formed in accordance with R.C. 3709.07, R.C. 3709.071, and R.C. 3709.10”). (Footnote omitted.)

See also 1989 Op. Att’y Gen. No. 89-032 at 2-132 (“[p]ursuant to R.C. 3709.07, a combined health district constitutes a general health district, and its governing body ‘shall have, within the combined district, all the powers granted to, and perform all the duties required of, the board of health of a general health district.’ An analysis of the powers of a combined health district is, accordingly, applicable to the boards of health of all general health districts”).

Each general health district has a governing body, the board of health, R.C. 3709.02, and a district advisory council, R.C. 3709.03. The board must appoint a health commissioner, who is the secretary and executive officer of the board. R.C. 3709.11.

According to the website of the Ross County Health District, the District “was formed in 1979, when the Boards of Health of the Chillicothe City Health Department (1908) and the Ross County General Health District (1920) agreed to a merger.” <http://www.rosscountyhealth.com/aboutus.htm> (last visited July 16, 2008). *See* R.C. 3709.07.

such disposition would appear to be reasonably implied where the board has determined that such automobiles are no longer essential to the successful, economical and efficient conduct of its work”).² See also *Minamax Gas Co. v. State ex rel. McCurdy*, 33 Ohio App. 501, 507, 170 N.E. 33 (Scioto County 1929) (“the right to alien [county property] follows necessarily as an incident to ownership”); 1974 Op. Att’y Gen. No. 74-020 at 2-89 (a lack of implied authority for a joint township district hospital board to sell land “could be detrimental to the public interest”).

Method for Disposing of Obsolete Personal Property

We turn now to examine whether a board of health is limited in the manner in which it may dispose of personal property that is obsolete or of no further use to the district. Your office has specifically mentioned the application of R.C. 307.12 to the general health district.

R.C. 307.12 provides a comprehensive and detailed scheme for the disposition of property “when the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, is obsolete, or is unfit for the use for which it was acquired.” The process that must be utilized by the county for the disposition of personal property depends upon the fair market value of the property to be sold or donated. Generally speaking, when the fair market value of the property exceeds \$2,500, the board of county commissioners must “[s]ell the property at public auction or by sealed bid to the highest bidder.” R.C. 307.12(A)(1). If the value of the property is \$2,500 or less, the board of county commissioners may “[s]ell the property by private sale, without advertisement or public notification.” R.C. 307.12(B)(1). The statute also provides for the donation of property to non-profit organizations, the donation, sale, or lease of property to other public agencies, the combination of sales with purchases of other property, and the discard or salvage of obsolete property with no value. In 1984 Op. Att’y Gen. No. 84-054, the Attorney General concluded that, although a county board may have an implied power to dispose of personal property under its jurisdiction, “R.C. 307.12 operates as a limitation upon such implied power and determines the applicable law and procedure for the disposition of personal property.” *Id.* at 2-181.

R.C. 307.12 applies, however, only to *county* property. See 1984 Op. Att’y Gen. No. 84-054. As explained in detail in 1997 Op. Att’y Gen. No. 97-029, a “general health district is not an office of the county because it is an entity separate and distinct from the county,” and “[t]hus, health districts are created as divisions of the state and are considered to be separate political subdivisions.” *Id.* at 2-174. Accord 2004 Op. Att’y Gen. No. 2004-047 at 2-411 (“[a] general health district is a

² This opinion is limited to the ability of a board of health of a general health district to dispose of personal property that is obsolete or of no further use to the district. We do not address the authority of a board of health to transfer property under other circumstances. See generally *Schwing v. McClure*, 120 Ohio St. 335, 166 N.E. 230 (1929); 2006 Op. Att’y Gen. No. 2006-001.

political subdivision separate from the county and also separate from the townships and municipalities whose territory it includes’); 1995 Op. Att’y Gen. No. 95-030; 1991 Op. Att’y Gen. No. 91-016 at 2-80 (“health districts are political subdivisions of the state, governed by state law, and are separate from any city, county, township or other local government”); 1989 Op. Att’y Gen. No. 89-032 at 2-132; 1951 Op. Att’y Gen. No. 934, p. 803, 808 (district boards of health were created “as legal entities, separate and apart from the municipalities or townships included therein”). *See also* 1975 Op. Att’y Gen. No. 75-036 at 2-143 (city health districts and general health districts are political subdivisions and not state agencies). Therefore, property of a general health district is not county property and the board of health is not required to dispose of the district’s personal property in accordance with R.C. 307.12.³

We are unaware of any other statutory requirements with which a board of health must comply in disposing of its obsolete personal property. The board may exercise its discretion, therefore, to develop a method for determining when property is obsolete or of no further use to the district, and to establish an appropriate process for disposing of such property.

The board must exercise its discretion, however, in a reasonable and objective manner. *See* 2005 Op. Att’y Gen. No. 2005-029 at 2-304; 2004 Op. Att’y Gen. No. 2004-002 at 2-10; 1984 Op. Att’y Gen. No. 84-054 at 2-179, n.2 (“[i]t has long been accepted that the power to acquire and own real property carries with it the implied power of alienation and the discretion to use any reasonable method in disposing of such property”). The board of health has an obligation to develop methods for disposing of property that are appropriate considering the property’s nature and value, and in light of other pertinent factors. 2005 Op. Att’y Gen. No. 2005-029. One or more types of competitive processes, such as a public auction or sealed bids, would help assure the best possible price for the health district while preventing fraud and collusion. 2004 Op. Att’y Gen. No. 2004-002 at 2-11 to 2-12, n.8; 1994 Op. Att’y Gen. No. 94-021; 1987 Op. Att’y Gen. No. 87-079; 1987 Op. Att’y Gen. No. 87-050; 1974 Op. Att’y Gen. No. 74-020. *See also* 2005 Op. Att’y Gen. No. 2005-029 (describing the value of a competitive process that appears fair as well as is fair). *Cf.* 1987 Op. Att’y Gen. No. 87-050 at 2-325 (if the costs of providing notice and holding an auction could exceed the value of the property being sold, it may be possible to combine the sale of different items; “[i]n any event, the township trustees are not prevented from simply discarding as trash any items that they reasonably determine to have no resale value”). Although a board of health is not required to abide by R.C. 307.12, it may wish to proceed with a com-

³ A board of county commissioners is authorized to provide financial and other support to a general health district and its programs. *See* R.C. 3709.283; R.C. 3709.34. Such support could presumably include the provision of personal property. Whether personal property provided by the county remains county property or becomes district property is, of course, a factual determination. If, however, the property remains that of the county, the board of county commissioners would be subject to R.C. 307.12 in the disposition of such property.

petitive process and incorporate any statutory or other reasonable provisions it finds appropriate. *See* 2005 Op. Att’y Gen. No. 2005-029; 2004 Op. Att’y Gen. No. 2004-002 at 2-10, n.4; 1974 Op. Att’y Gen. No. 74-020. *See also* R.C. 505.10 (disposal of township property); R.C. 3313.41 (disposal of property by a board of education).⁴ Once the board has adopted a policy, the board and district employees must adhere to its terms as if it were a statutory mandate. 2005 Op. Att’y Gen. No. 2005-029 at 2-305, n.9.

Deposit of Proceeds from the Sale of Personal Property

Your second question is whether the proceeds from the sale of the health district’s personal property must be deposited in the county’s general fund or should be credited to the health district.⁵ The General Assembly has established for each general health district a “separate” fund, known as the “district health fund,” and moneys that are assessed against the townships and municipal corporations within a district to finance the district’s budget, and “all other sources of revenue,” are deposited in the district health fund.⁶ R.C. 3709.28. As discussed above, a general health district is an independent political subdivision, separate from the county, and although the county treasurer is the “custodian” of the district health fund, and

⁴ The board of health may wish to emphasize in its policy that all transactions must comply with the Ohio ethics law, R.C. Chapter 102 and R.C. 2921.42 and 2921.43, and require consultation with the Ohio Ethics Commission regarding transactions posing possible conflicts of interest under the ethics law. *See, e.g.*, R.C. 307.12(C); R.C. 505.10(C); R.C. 3313.41(H).

⁵ Each county has a general fund, R.C. 5705.09(A), into which is paid “[a]ll revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law.” R.C. 5705.10(A).

⁶ The board of health of a general health district is required to adopt annually an itemized appropriation measure setting forth the current expenses for the next fiscal year; the board must certify the measure, along with an itemized estimate of available sources of revenue, to the county auditor, who in turn certifies the measure to the county budget commission. R.C. 3709.28. The budget commission “may reduce any item in such appropriation measure but may not increase any item or the aggregate of all items.” *Id.*

The appropriation fixed by the budget commission, less the amount of revenue available to the district, is then apportioned by the county auditor among the townships and municipal corporations composing the health district on the basis of the taxable valuations in each township and municipal corporation. R.C. 3709.28. *See also* R.C. 5705.05(C) (the general levy of a taxing authority [such as a board of township trustees and legislative authority of a municipal corporation] must include the “amounts necessary for boards and commissioners of health, and other special or district appropriating authorities deriving their revenue in whole or part from the subdivision”). “Such moneys and *all other sources of revenue* shall be placed in a

health district expenses are paid on the warrant of the county auditor, R.C. 3709.31, the health fund is not part of the county treasury. *See* 1997 Op. Att’y Gen. No. 97-029; 1951 Op. Att’y Gen. No. 934, p. 803. In 1959 Op. Att’y Gen. No. 935, p. 639, the Attorney General advised that proceeds from the sale of a general health district’s automobiles, “being funds of the health district . . . should be placed in the health fund of the general health district.” *Id.* at 643. The conclusion is consistent with R.C. 3709.28, establishing the district health fund for the deposit of revenue received by a general health district, and nothing has changed that would cause us to disagree with this advice. The proceeds from the sale of a general health district’s personal property must be deposited in the district health fund.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. The board of health of a general health district has the authority to dispose of the district’s personal property that is obsolete, unfit for use, or no longer needed by the district.
2. Neither R.C. 307.12 nor other statutory provision prescribes a method for disposing of a general health district’s obsolete, unfit, or unneeded personal property. Therefore, the board of health of a general health district must, in the reasonable and objective exercise of its discretion, promulgate a policy for determining when personal property is obsolete, unfit for use, or no longer needed by the district, and establish an appropriate process for disposing of such property.
3. The proceeds from the sale of a general health district’s personal property must be deposited in the district health fund established pursuant to R.C. 3709.28.

separate fund, to be known as the ‘district health fund.’” (Emphasis added.) R.C. 3709.28.

If money in the district health fund is inadequate to meet the necessary expenses of the health district because taxes within the ten-mill limitation are insufficient, the board of health shall certify the insufficiency to the board of county commissioners, which then must file a resolution with the county board of elections to place on the ballot a tax levy in excess of the ten-mill limitation. R.C. 3709.29. *See also* R.C. 5705.31(E); *Village of South Russell v. Geauga County Budget Commission*, 12 Ohio St. 3d 126, 465 N.E.2d 876 (1984); 2001 Op. Att’y Gen. No. 2001-013.