

**OPINION NO. 84-013****Syllabus:**

1. A county budget commission does not have the authority to reconsider the approved budget of a county general health district and increase the amount of funds to be apportioned among the townships and municipal corporations comprising the health district to make up for anticipated funds from other sources included in the budget which will not be received.
2. The county auditor cannot apportion any part of a board of health of the county health district's aggregate appropriation under R.C. 3709.28 when the health district did not file with the municipalities and townships within the district an estimate of contemplated revenue and expenses pursuant to R.C. 5705.28 and when neither the aggregate appropriation for the health district as approved by the county budget commission nor the apportionment thereunder was communicated to the municipalities and townships until after the latter's budgets had been submitted and approved without any provision therefor. (1933 Op. Att'y Gen. No. 132, p. 149, approved and followed.)

To: **W. Duncan Whitney, Delaware County Prosecuting Attorney, Delaware, Ohio**  
By: **Anthony J. Celebrezze, Jr., Attorney General, March 26, 1984**

I have before me your request for my opinion concerning whether the county budget commission may reconsider the county general health district's budget. Specifically, you ask the following questions:

- (1) Does the Delaware County Budget Commission have the authority to reconsider the 1984 budget of the Delaware County General Health District which was approved on August 31, 1983 and increase the amount of funds to be apportioned among the township and municipal corporations comprising the health district to make up for anticipated funds included in the budget which will not be received?
- (2) Can the County Auditor apportion any part of the Board of Health of Delaware County Health District's aggregate appropriation under Section 3709.28 when the Health District did not file with the municipalities and townships within the district an estimate of contemplated revenue and expenses pursuant to [R.C. 5705.28] and when neither the aggregate appropriation for the Health District as approved by the Budget Commission nor the apportionment thereunder was communicated to the municipalities and townships until after the latter's budgets [had] been submitted and approved without any provisions therefore?

R.C. 3709.01 defines a city health district and a general health district 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."

As provided for in section 3709.07, 3709.071, and 3709.10 of the Revised Code, there may be a union of two or more contiguous general health districts, not to exceed five, a union of two or more contiguous city health districts to form a city health district, or a union of a general health district and one or more city health districts located with or partially within such general health district.

R.C. Chapter 3709 details the duties of a general health district. R.C. 3709.28 is the important statute on funding for a general health district.<sup>1</sup> R.C. 3709.28 states:

The board of health of a general health district shall, annually, on or before the first Monday of April, adopt an itemized appropriation measure. Such appropriation measure shall set forth the amounts for the current expenses of such district for the fiscal year beginning on the first day of January next ensuing. The appropriation measure, together with an estimate in itemized form, of the several sources of revenue available to the district, including the amount due from the state for the next fiscal year as provided in section 3709.32 of the Revised Code and the amount which the board anticipates will be collected in fees during the next ensuing fiscal year, shall be certified to the county auditor and by him submitted to the county budget commission which may reduce any item in such appropriation measure but may not increase any item or the aggregate of all items.

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<sup>1</sup> R.C. 3709.28 was formerly Section 1261-40 of the General Code. This statute was originally enacted as part of the Griswold Act in 1919. The constitutionality of its funding procedures was upheld in State ex rel. Village of Cuyahoga Heights v. Zangerle, 103 Ohio St. 566, 134 N.E. 686 (1921).

The aggregate appropriation, as fixed by the commission, less the amounts available to the general health district from the several sources of revenue, including the estimated balance from the previous appropriation, shall be apportioned, by the auditor among the townships and municipal corporations composing the health district on the basis of taxable valuations in such townships and municipal corporations. The auditor, when making his semiannual apportionment of funds, shall retain at each semiannual apportionment one half of the amount apportioned to each township and municipal corporation. Such moneys and all other sources of revenue shall be placed in a separate fund, to be known as the "district health fund." When a general health district is composed of townships and municipal corporations in two or more counties, the auditor making the original apportionment shall certify to the auditor of each county concerned the amount apportioned to each township and municipal corporation in such county. Each auditor shall withhold from the semiannual apportionment to each such township or municipal corporation the amount certified, and shall pay the amounts withheld to the custodian of the funds of the health district concerned, to be credited to the district health fund.

Subject to the aggregate amount as has been apportioned among the townships and municipalities and as may become available from the several sources of revenue, the board of health may, by resolution, transfer funds from one item in their appropriation to another item, reduce or increase any item, create new items, and make additional appropriations or reduce the total appropriation. Any such action shall forthwith be certified by the secretary of the board of health to the auditor for submission to and approval by the budget commission.

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. After approval by the county budget commission, the county auditor shall thereupon apportion the amount certified to the townships and municipal corporations, and shall withhold the sums apportioned as provided in this section. (Emphasis added.)

It appears to be clear pursuant to R.C. 3709.28 that the current expenses of a general health district, as fixed by the county budget commission, are intended to be apportioned among the townships and municipalities composing the district, to the extent that such expenses cannot be met from other available sources provided by law. The counterpart of R.C. 3709.28 is R.C. 5705.05(C), which requires the taxing authority of each subdivision to include in its general levy for current expenses "[t]he 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." The requirements of these two statutes are coordinated through R.C. 5705.28, which provides, in pertinent part:

On or before the fifteenth day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board, commission and district authority<sup>2</sup> entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, or in the case of a municipal corporation, with its chief executive officer,

<sup>2</sup> The term "district authority" is defined in R.C. 5705.01(I) to include district boards of health.

before the first day of June in each year, an estimate of contemplated revenues and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the bureau of supervision and inspection of public offices. [Footnote added.]

It is my understanding from the information you have provided, however, that the Delaware County General Health District has deviated from these statutory procedures for the last several years. Rather than proceeding in accordance with R.C. 3709.28 and R.C. 5705.28, the county general health district has elected to rely on revenue from outside sources and a special levy enacted pursuant to R.C. 3709.29. As you note in your request, this alternative procedure is questionable since it was concluded in 1953 Op. Att'y Gen. No. 2569, p. 163 that: "The trustees of a general health district have no authority to surrender the funds available to it within the ten mill limitation, and seek to obtain under the provisions of Section 1261-40(a) of the General Code [now R.C. 3709.29], a special voted levy covering their entire operating budget for the ensuing year." This alternative procedure was not, however, previously questioned because until this year all the special levys passed and no problems arose. This year, however, a significant problem has arisen. Your letter sets out the following pertinent facts:

On April 7, 1983, the Health District submitted its proposed 1984 budget to the County Budget Commission and included therein an income item of \$250,000.00 as anticipated levy revenues. This \$250,000.00 figure included \$120,000 to be received from an existing levy and \$130,000.00 to be received from the additional levy to be voted on November 8, 1983. In addition the District's proposed budget included \$20,000.00 which the District expected to have apportioned among the municipalities and townships pursuant to Section 3709.28. The District, however, did not make available to the townships and municipalities its estimated revenue and expenses pursuant to Section 5705.05. The Health District Budget was not acted upon by the Budget commission until August 31, 1983, when the aggregated appropriation was approved as submitted.

On November 8, 1983, after the additional levy failed the Health District Board requested the Budget Commission to reconsider its budget in light of the projected deficit occasioned by the levy's defeat. The Health District has satisfied the Commission that even after trimming its 1984 expense essentials it will still face a very substantial deficit which could necessitate the termination of mandated services.

To help alleviate the Health District's funding problem the Health district's Board has asked the Budget Commission to apportion additional sums from the "within ten mill levy funds" of the townships and municipalities. The Commission questions what authority it now has over the Health District's Budget and those of the townships and municipalities which were also previously approved on August 31, 1983, and we therefore respectfully request your opinion as to our first question.

Your first question deals with the powers or authority of the county budget commission to reconsider the general health district's 1984 budget so as to increase the amounts apportioned among the various townships and municipal corporations that comprise the general health district. It is important for this consideration to point out that the county budget commission is being asked to increase, not decrease, the apportionments and that the general health district's budget, as well as the budgets for the townships and municipalities composing the district, were previously approved by the county budget commission.

The authority of the county budget commission to reduce any items in the general health district's budget prior to approval of the budget has been upheld by my predecessors. See 1925 Op. Att'y Gen. No. 2242, p. 87; 1937 Op. Att'y Gen. No. 997, vol. II, p. 1744. However, once the budget has been approved by the county

budget commission, all authority and powers of the county budget commission over the general health district's budget ceases. The Revised Code does not "provide for continuing supervision by the county budget commission of the funds of a general health district. When the budget commission has performed the duties prescribed by Section 3709.28, Revised Code, it has no further duty or authority with respect to the estimates of expenses or the itemization thereof."<sup>3</sup> 1957 Op. Att'y Gen. No. 738, p. 282, affirmed in 1968 Op. Att'y Gen. No. 68-063; 1935 Op. Att'y Gen. No. 4043, vol. I, p. 285 (county budget commission may not consider the needs of a subdivision or taxing unit so as to adjust tax levies upon the subdivision or taxing unit once the original budget has been filed with the county auditor and approved by the county budget commission); 1932 Op. Att'y Gen. No. 4244, p. 549 (county budget commission's authority over taxation ceases when the budget is completed and approved). I am in agreement with my predecessors that the county budget commission relinquishes all control over the general health district budget, for the purpose of apportioning the district's expenses among the townships and municipalities composing the district, upon certification and approval of the budget in conformity with the requirements of R.C. 3709.28. Nor are there provisions in the general budgetary law, R.C. Chapter 5705, permitting amended, supplementary or revised general health district budgets to be considered by the county budget commission. Thus once the general health district's budget has been approved by the county budget commission, the commission cannot reconsider the budget.

Your second question deals with whether the county auditor can apportion any part of the general health district's appropriation of funds to the townships and municipalities comprising the general health district when the health district did not file with the townships and municipalities an estimate of contemplated revenues and expenses pursuant to R.C. 5705.28 and when neither the aggregate appropriation for the health district nor the apportionments thereof were communicated to the townships and municipalities until after the township and municipal budgets were submitted and approved by the county budget commission. Two of my predecessors have had the opportunity to address this question. In 1933 Op. Att'y Gen. No. 132, p. 149, it was held:

A county auditor has no authority under Section 1261-40, General Code, [now R.C. 3709.28], to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities.

In this opinion, my predecessor stated he found no authority in the law whereby the general health fund could receive any part of the proceeds from taxation when no provisions for such had been made in the budgets of the townships and municipalities. 1933 Op. No. 132 at p. 152. Since R.C. 5705.05 and R.C. 5705.28 contain very explicit instructions for coordinating a subdivision's tax budget with the apportionment authorized in R.C. 3709.28, I agree with the conclusion reached in 1933 Op. No. 132.

Another predecessor, addressing this issue under a slightly different set of facts, stated in 1951 Op. Att'y Gen. No. 934, p. 803:

Where the board of health of a general health district, in compliance with the provisions of section 1261-40 General Code, [R.C. 3709.28], has certified its estimate of the amounts needed for

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<sup>3</sup> R.C. 3709.28 was amended in 1967 (Am. S.B. 257, 107th Gen. A. (1967) (eff. Nov. 24, 1967)), which amendment gave the budget commission a very limited role after approval of the budget, whereby the budget commission must approve the transfer, increase, decrease, or substitution of funds from one item to another within the budget. However, this authority to increase, decrease or substitute funds is "[s]ubject to the aggregate amount as has been apportioned among the townships and municipalities and as may become available from the several sources of revenue," and does not authorize the commission to increase the amount previously apportioned to make up for an anticipated deficit.

current expenses for the ensuing year to the county auditor, the aggregate of all such items has been approved by the budget commissioners and the aggregate amount as fixed by the budget commissioners has been apportioned by the county auditor among the townships and municipalities composing such health district within such time as to permit such townships and municipalities to include the amounts so apportioned within their respective budgets, the failure of such health district to file directly with such municipalities or townships, under section 5625-20 General Code, [R.C. 5705.28], an estimate of contemplated revenues and expenses for the ensuing fiscal year or the refusal of such municipalities or townships to include such apportioned amounts in their respective budgets does not affect the duty of the county auditor, under section 1261-40, General Code, in making his semi-annual apportionment of funds, to retain one-half the amount so apportioned and to place such monies in the district health fund. (Emphasis added.)

The latter opinion narrows the former by indicating that the county auditor may retain the funds due to the general health fund under certain circumstances, even though the amounts so apportioned were not included in the township and municipal budgets. However, a condition precedent to the county auditor's authority to perform this function is that the aggregate amount as determined by the county budget commission has been apportioned and communicated to the townships and municipalities in sufficient time that the townships and municipalities could have included these amounts in their budgets. These are not the circumstances with which you are confronted. You specifically state that the aggregate appropriation for the health district and the apportionments against the townships and municipalities were not communicated to the townships and municipalities until after their respective budgets had been submitted and approved by the county budget commission. Therefore, in these circumstances 1933 Op. Att'y Gen. No. 132 continues to apply. The county auditor cannot in this instance apportion any part of the general health district's aggregate appropriation against the townships and municipalities comprising the general health district.

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

1. A county budget commission does not have the authority to reconsider the approved budget of a county general health district and increase the amount of funds to be apportioned among the townships and municipal corporations comprising the health district to make up for anticipated funds from other sources included in the budget which will not be received.
2. The county auditor cannot apportion any part of a board of health of the county health district's aggregate appropriation under R.C. 3709.28 when the health district did not file with the municipalities and townships within the district an estimate of contemplated revenue and expenses pursuant to R.C. 5705.28 and when neither the aggregate appropriation for the health district as approved by the county budget commission nor the apportionment thereunder was communicated to the municipalities and townships until after the latter's budgets had been submitted and approved without any provisions therefor. (1933 Op. Att'y Gen. No. 132, p. 149, approved and followed.)