

## OPINION NO. 74-032

## Syllabus:

1. The board of county commissioners has authority to transfer any county office, except for courts of general jurisdiction, from the courthouse to other quarters provided by the board;

2. The expense of moving the offices of a general health district from the courthouse to other quarters should be paid by the board of county commissioners out of the county general fund. If there is no money available in that fund, the board of health of the general health district may, with the approval of the county budget commission under R.C. 3709.28, transfer funds from other items to meet the expense;

3. Money specifically levied for the maintenance and operation of a county tuberculosis clinic cannot be used

to pay the expense of moving the clinic from the court house to new quarters.

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To: Joseph J. Barozzi, Columbiana County Pros. Atty., Lisbon, Ohio  
By: William J. Brown, Attorney General, May 1, 1974

I have before me your request for my opinion which reads as follows:

"The Commissioners of Columbiana County, Ohio are in need of office space in the Courthouse to provide adequate space for the Prosecuting Attorney which is now insufficient as per present space. The Commissioners indicate that they wish to move the County Health Department offices out of the Courthouse and into a building a block away which houses a number of other county offices.

"They also advise me that as part of the Health Department we have the Tuberculosis Clinic which has funds in the approximate amount of \$90,000. The two questions that I am interested in getting answers to are:

"1. Can the County Commissioners order the Health Department and the T.B. Department to take up housing in another building outside of the Courthouse and make them pay for the move out of their own funds?

"2. Is the Board of County Commissioners responsible to provide housing for the county T.B. Department?"

1. It has always been recognized that the board of county commissioners is the agent or guardian of the county, in the sense that it acts for the county in its financial matters. State v. Piatt, 15 Ohio 15, 23 (1846); Shanklin v. Commissioners, 21 Ohio St. 575, 583 (1871); 14 O. Jur. 2d 240-241. The board is specifically authorized by statute to provide office space and office buildings for county offices with a view to the expeditious and economical administration of the county's business. Thus, R.C. 307.01 provides:

"A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county commissioners when in its judgment any of them are needed. Such buildings and offices shall be of such style, dimensions, and expense as the board determines. The board shall also provide equipment, stationery, and postage, as it deems necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices. The board shall provide all rooms, fireproof

and burglarproof vaults, safes, and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein." (Emphasis added.)

And R.C. 307.02 provides in pertinent part as follows:

"The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, \* \* \* other necessary buildings, \* \* \*."

The Supreme Court has held that the board of county commissioners has broad discretion to determine where the various county offices shall be located. In State, ex rel. Bittikoper v. Babst, 97 Ohio St. 64, 64 (1917), the Court said:

"The county commissioners are also authorized to provide suitable offices for county officers, either in a separate building or in the courthouse itself, \* \* \*; and, while, under the express provisions of the statute, the county commissioners have full control over these offices, whether located in the courthouse or in a separate building, yet this, however, does not alter the fact that the primary purpose of the courthouse is to provide a permanent seat of justice. \* \* \*"

The one limitation upon this discretion of the board is that courts of general jurisdiction must be lodged in the courthouse, and that the board must provide such space and facilities as are essential to the proper and efficient operation of the courts. State, ex rel. Finley v. Pfeiffer, 163 Ohio St. 149, 152-157 (1955); In re Court, 162 Ohio St. 345, 347-352 (1954); Zangerle v. Court of Common Pleas, 141 Ohio St. 70, 79-83 (1943).

In view of the fact that the business of the prosecuting attorney's office is so largely with the courts, it can hardly be considered an abuse of discretion if the board of county commissioners decides that the prosecutor's office should be located in the courthouse. In Dittrick v. Barr, 22 O.L.R. 289, 290-291 (1924), the Court of Appeals for Cuyahoga County said:

"\* \* \*for it has been held that the office of the prosecuting attorney \* \* \*has a quasi judicial character, and the office itself is an aid to the courts in the administration of justice and interpretation of the laws."

I conclude, therefore, that the board of county commissioners may transfer another county office from the courthouse to another building in order to provide space in the courthouse for the office of the prosecuting attorney.

2. You next ask whether the board of county commissioners can make the County Health Department pay for its move to new quarters out of its own funds.

I understand that by the County Health Department you refer to the general health district of your county, which actually is an arm of the state and derives its authority directly from the state. For a recent discussion of the history of city and general health districts and the Hughes and Griswold Acts, see Opinion No. 74-014, Opinions of the Attorney General for 1974; see also R.C. 3709.01, 3709.20 and 3709.21, and Opinion No. 4567, Opinions of the Attorney General for 1935. Although such health districts derive their powers entirely from the state, they still retain certain ties with the county or the city with which they coexist. Opinion No. 71-078, Opinions of the Attorney General for 1971. Thus, the board of county commissioners is obliged to provide suitable quarters for a general health district. R.C. 3709.34; Opinion No. 72-098, Opinions of the Attorney General for 1972. And the current expenses of a general health district are provided by an appropriation measure submitted by the county auditor to the county budget commission. See R.C. 3709.28 which provides in pertinent part:

"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.

"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.' \* \* \*

"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."

See also R.C. 3709.29 and 3709.30.

If the general health district had foreseen the necessity for moving its offices out of the courthouse, and had included the moving expense in its appropriation request under R.C. 3709.28 as an item of current expense, there would be no question. See Opinion No. 3499, Opinions of the Attorney General for 1954. I assume that this did not happen and that the health district is, therefore, without funds specifically committed to meet an expense necessitated by the action of the board of county commissioners. Since, under R.C. 307.01, supra, the board of county commissioners are required to provide such facilities as will be conducive to the expeditious and economical administration of all county offices, I conclude that the board should pay the expense of moving the health district offices out of the county's general fund. If there is no money available in the general fund, the board of health of the general health district may, under R.C. 3709.28, create a new appropriation item to cover the moving expense, and, with the approval of the county budget commission, transfer funds from other items to meet that expense.

3. Your final question concerns the county tuberculosis clinic. I understand that your clinic has been established and is maintained under the authority of R.C. 339.39 which reads as follows:

"The board of county commissioners of any county may establish and maintain one or more tuberculosis clinics in the county, may employ physicians, public health nurses, and other persons for the operation of such clinics or other means as are provided for the prevention, cure, and treatment of tuberculosis, and may provide by tax levies, or otherwise, the necessary funds for such clinics to be established, maintained, and operated. Clinics so established shall be under the control of the board of county commissioners, and shall be supervised by a board of three trustees, similar in all respects to and with all the powers enjoyed by a board of trustees of a county tuberculosis hospital, or by a city or general district board of health within the county, as the board of county commissioners designates." (Emphasis added.)

Your letter states that the tuberculosis clinic is supervised by the general health district. I understand this to mean that the board of county commissioners has designated the board of health of the general district as supervisor of the tuberculosis clinic under the last sentence of R.C. 339.39. See Opinion No. 66-118, Opinions of the Attorney General for 1966. However, it will have become clear, from what has been said above, that the clinic and the health district are two separate and distinct entities. The health district is an agency of the state; the clinic is a county agency under the primary control of the board of

county commissioners. The funds of the two different agencies should, therefore, be carefully segregated, and the funds of the clinic obviously cannot be used to pay the moving expenses of the health district.

Since the tuberculosis clinic is a duly established county agency, it follows, from what has been said in answer to your first question, that the board of county commissioners is required by R.C. 307.01 and 307.02 to provide it with proper office space. But whether the funds of the clinic can be used to pay for its transfer from the courthouse to its new quarters depends upon the statutory purpose for which those funds were appropriated.

As has been noted above, the board of county commissioners is to provide the funds necessary for the establishment, maintenance and operation of the clinic. A recent opinion, Opinion No. 73-013, Opinions of the Attorney General for 1973, dealt with the effect of a tax levy "for tuberculosis clinic services and for the hospitalization of Athens County residents with tuberculosis." The question was whether the funds could be used for equipment and supplies for the clinic. I said there,

"\* \* \* I can only conclude that the intent was to provide funds for the establishment, maintenance and operation of a clinic. By necessary implication, this means the purchase of equipment and supplies."

In another opinion one of my predecessors held that funds derived from a special levy for a tuberculosis hospital, which was authorized under R.C. 339.45 to admit patients suffering from other diseases than tuberculosis, could be used for the care and treatment of such other patients. He was careful to point out, however, that under R.C. 339.45, public funds specifically levied for the treatment of tuberculosis patients could not be used for the care of patients not suffering from that disease, although they could be cared for in the hospital by the use of funds levied generally for the benefit of the hospital. Opinion No. 2312, Opinions of the Attorney General for 1961.

In the case you present, I must assume that the funds of the clinic have been derived, under R.C. 339.39, specifically for the maintenance and operation of a tuberculosis clinic. I do not think that either of the above mentioned opinions applies here, or that there is a necessary implication that funds levied specifically for the operation of the clinic can be used to pay for its removal to another building. As with the general health district in the previous section, the board of county commissioners is responsible for the move and is required to provide satisfactory new quarters for the clinic. I conclude that the board should pay the moving expenses out of the general fund. It should be noted that the statutory authority which enables the health district to transfer appropriation items from one purpose to another does not apply to the tuberculosis clinic.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The board of county commissioners has authority to transfer any county office, except for courts of general

jurisdiction, from the courthouse to other quarters provided by the board;

2. The expense of moving the offices of a general health district from the courthouse to other quarters should be paid by the board of county commissioners out of the county general fund. If there is no money available in that fund, the board of health of the general health district may, with the approval of the county budget commission under R.C. 3709.28, transfer funds from other items to meet the expense;

3. Money specifically levied for the maintenance and operation of a county tuberculosis clinic cannot be used to pay the expense of moving the clinic from the court house to new quarters.