

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

2053.

BOARD OF HEALTH OF GENERAL HEALTH DISTRICT—AUTHORITY TO  
FILE COMPLAINTS.

*SYLLABUS:*

*A board of health of a general health district provided for and appointed under the provisions of Section 1261-16, et seq., General Code, comes within the category of "officers performing the duties of a board of health of a village," within the purpose and intent of Section 1249, General Code, and as such is authorized to file with the state department of health the complaint therein provided for, in all cases where the board of health of a village in the county, prior to the amendment of Section 4404, General Code, 108 O. L., Part 1, 247, was authorized to do so.*

COLUMBUS, OHIO, May 4, 1928.

HON. JOHN E. MONGER, *Director of Health, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication in which you advise that on July 29, 1926, there was filed with the State Department of Health a petition purporting to be signed by fifty persons, residents and qualified electors of Crawford County and of villages and townships therein, complaining that the City of Bucyrus was discharging and permitting to be discharged sewage and other waste matter into the Sandusky River with the result that the same created a public nuisance detrimental to health and comfort, and that the waters of said river were so polluted and contaminated that they were rendered unfit for watering stock or for any other domestic purpose. This petition which was filed under the authority of Section 1249, General Code, requested your department to take proper steps to abate the nuisance complained of.

You further state that under date of September 30, 1927, the board of health of Crawford County, General Health District, filed with the State Department of Health a copy of a resolution theretofore adopted by said Crawford County General Health District, reciting that the City of Bucyrus was permitting sewage to be discharged into the Sandusky River and thereby creating a public nuisance detrimental to health, and requesting the State Department of Health to investigate the conditions complained of and to take appropriate action in the matter in accordance with Sections 1249 to 1261, inclusive, of the General Code.

You advise that this petition and complaint were duly investigated and that as the result of such investigation the director of health made findings that sewage from the City of Bucyrus discharged into the Sandusky River had so corrupted said stream as to give rise to foul and noxious odors and conditions detrimental to health and com-

fort. Notice of this finding was forwarded to the mayor and council of the City of Bucyrus and said officials were further notified that the public health council would give a hearing to the duly authorized representatives of the City of Bucyrus with respect to said finding at a meeting thereafter to be held at the office of the Director of Health on January 13, 1928. At the time and place fixed for said hearing the representatives of the City of Bucyrus appeared and, on representation made that sufficient time had not been allowed to prepare for said hearing, continuance was granted until March 9, 1928.

You state that on this latter date representatives of said city again appeared before the public health council and that thereupon the city solicitor of the City of Bucyrus, on behalf of said city, filed with the director of health and the public health council a certain motion in which objection was made to any action on the part of the director of health or the public health council with respect to said finding, and to any determination or order by either the director of health of the public health council for the following stated reasons:

"1. Said department of health, the director of health, and said public health council are without jurisdiction to make any order in the premises and are without jurisdiction of the subject matter hereof, in this that the alleged complaint heretofore filed herein is insufficient in law; the same does not comply with Section 1249 of the General Code; the same is not signed by fifty qualified electors of any city, village or township and is otherwise insufficient in law.

2. The so-called resolution purporting to be a resolution of the board of health of Crawford County, Ohio, of September 28, 1927, is unauthorized by, and is without sanction of, law and of no force and effect."

In your communication you further say:

"This motion as you will note attacks the validity of the petition and also of the complaint. This department is satisfied to accept evidence presented by the present clerk of the board of elections, supported by the evidence of persons present at the hearing who circulated the petition, that of the fifty persons who signed the original petition some were not residents of Crawford County or of any city, village or township in that county. As a matter of fact some of these persons were residents of Wyandot County.

This department does not accept the statement set forth in the motion that the board of health of the general health district is without authority to make the complaint authorized in Section 1249, G. C. It is the belief of this department that the board of health of a general health district succeeded to the powers, duties and responsibilities of the boards of health of villages and townships heretofore existing in the county.

In order that we may be advised in regard to the sufficiency of the complaint, I shall be pleased to have your opinion as to whether or not the board of health of a general health district has the authority to make complaint to the director of health as provided in Section 1249, G. C."

Section 1249, General Code, referred to in your communication, reads as follows:

"Whenever the council or board of health, or the officer or officers performing the duties of a council or board of health, of a city or village, the commissioners of a county, the trustees of a township or fifty of the qualified

electors of any city, village or township, or the managing officer or officers of a public institution set forth in writing to the state department of health that a city, village, public institution, corporation, partnership or person is discharging or is permitting to be discharged sewage or other waste into a stream, water course, canal, lake or pond, and is hereby creating a public nuisance detrimental to health or comfort, or is polluting the source of any public water supply, the commissioner of health shall forthwith inquire into and investigate the conditions complained of."

Section 1250, General Code, provides among other things that if the commissioner of health finds that the discharge of sewage or other waste from a city or village has so corrupted a stream or water course so as to give rise to foul and noxious odors or conditions detrimental to health and comfort, he shall notify the mayor or managing officer or officers of such city or village of the time and place when and where a hearing may be had before the public health council.

By Section 1251, General Code, it is provided that if after such hearing the public health council shall determine that improvements or changes are necessary and should be made, the commissioner of health shall notify the mayor or managing officer or officers of such city or village to install works or means satisfactory to the commissioner of health for purifying or otherwise disposing of such sewage or other wastes, or to change or enlarge existing works in a manner satisfactory to the commissioner of health.

As I understand your communication, your question is whether the board of health of a general health district comes within the category of "officers performing the duties of \* \* \* board of health of a city or village" within the meaning of Section 1249, General Code, and as such is authorized to set forth in writing the complaint as provided for in said section and thereby confer upon the director of health and the public health council jurisdiction and power to remedy the conditions complained of by proceedings had in the manner provided by Section 1250, et seq., of the General Code.

Prior to its amendment by the so-called Hughes Law, 108 O. L., part 1, page 236, Section 4404, General Code, provided as follows:

"The council of each municipality shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by council who shall serve without compensation and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. But in villages the council, if it deems advisable, may appoint a health officer, to be approved by the state board of health who shall act instead of a board of health, and fix his salary and term of office. Such appointee shall have the powers and perform the duties granted to or imposed upon boards of health, except that rules, regulations or orders of a general character and required to be published, made by such health officer, shall be approved by the state board of health."

It is quite clear that the board of health of a city or village duly created under the provisions of this section would be a board of health of a city or village, as the case might be, under the provisions of Section 1249, General Code, and, as such, authorized to file the complaint therein provided for.

On April 17, 1919, the Legislature passed an act known as the Hughes Law, to create municipal and general health districts for purposes of local health administration, the sections of the act relating to the subjects being carried into the General Code as 1261-16 to 1261-43, inclusive. By this act a number of the sections of the

General Code relating to the powers and duties of boards of health were amended and among them Section 4404, General Code, above quoted.

Most of the sections of the General Code enacted by the Hughes Act, and above referred to, were later amended by the Griswold Act, so-called, 108 O. L., Part 2, p. 1085, and, as so amended, such of said sections of the General Code as are pertinent in the consideration of the question here presented may be briefly noted.

Section 1261-16, General Code, provides as follows:

“For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act (G. C. Sections 1261-16 et seq.) shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district.”

Section 1261-17, General Code, provides that in each general health district there shall be a district board of health consisting of five members to be appointed by the district advisory council provided for by Section 1261-18, General Code. Said Section 1261-18, General Code, provides in part as follows:

“Within sixty days after this act (G. C. Sections 1261-15 et seq.) shall take effect the mayor of each municipality not constituting a city health district and the chairman of the trustees of each township in a general health district shall meet at the county seat and shall organize by selecting a chairman and a secretary. Such organization shall be known as the district advisory council. The district advisory council shall proceed to select and appoint a district board of health as heretofore provided, having due regard to the equal representation of all parts of the district. \* \* \*”

Section 1261-19, General Code, provides that within thirty days of the appointment of the members of a district board of health in a general health district they shall organize by selecting one of their members as president and another member as president pro tempore. Said section further provides that said district board of health shall appoint a health commissioner who shall be the executive officer of the district board of health and he shall be charged with the enforcement of all sanitary laws and regulations in the district, and shall have within the general health district all the powers now conferred by law upon health officers of municipalities. Section 1261-26, General Code, provides among other things that “in addition to the duties now required by boards of health, \* \* \* the district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.”

Section 1261-30, General Code, obviously referring to both a city health district and a general health district, as provided for by Section 1261-16, General Code, provides as follows:

“The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penal-

ties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act. (G. C. Sections 1261-16 to 1261-43 and Sections 1245 et seq.). The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

Section 4404, General Code, now reads as follows:

"The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act (G. C. Sections 1261-16 et seq.; 4404; 4405; 4408; 4413) contained shall be construed as interfering with the authority of a municipality, making provision by charter for health administration other than as in this section provided."

In an opinion of this department, under date of January 28, 1920, Opinions of the Attorney General for 1920, Vol. 1, p. 130, it was held that the Hughes-Griswold act, creating city health district boards of health, abolished municipal boards of health established prior to the passage of such act under Section 4404, General Code. This was clearly the effect of said act with respect to village boards of health for the reason that under the provisions of Section 4404, General Code, as amended, no provision whatever was made for boards of health in villages.

Coming now to the question made in your communication, it appears that while the board of health of a general health district, provided for and appointed under the provisions of Section 1261-16 et seq., General Code, does not come within the category of "an officer or officers performing the duties of a board of health of a city", within the meaning of this language in Section 1249, General Code, above quoted, it is quite clear to my mind that inasmuch as the board of health of a general health district performs its duties throughout the district and in each and every village and township therein, it does come within the category of officers performing the duties of a board of health of a village within the purpose and intent of said Section 1249, General Code, and that as such the board of health of a general health district is authorized to file with the state department of health the complaint provided for by said Section 1249, General Code. However, it is to be observed that no independent grant of power is made to the board of health of a general health district by the provisions of Section 1249, General Code, to file the complaint therein provided for; and a board of health of a general health district may file the complaint provided for in said section and thereby confer upon the state department of health jurisdiction to make the necessary investigations, findings and orders to correct the conditions complained of only when the board of health of a village in the county, such as was provided for by Section 4404, General Code, prior to its amendment, could have filed such complaint and thereby conferred such jurisdiction upon the state department of health in the premises. That is, where the situation of a village in the county as to location with respect to the conditions complained of, or otherwise, is such that the board of health of the village, prior to the enactment of the Hughes-Griswold acts and the amendment of Section 4404, General Code, could have filed a complaint with the state department of health and thereby conferred jurisdiction upon said state department of health to act, the board of health of a general health district of the county in which such village is located may file such complaint, but not otherwise.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*