

## OPINION NO. 85-033

**Syllabus:**

In apportioning the appropriation for a general health district pursuant to R.C. 3709.28, the county auditor should exclude from the taxable valuations of a township which is part of the general health district those taxable valuations situated within a city which is located within the township and which has its own health department.

**To: Stanley E. Flegm, Crawford County Prosecuting Attorney, Bucyrus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, June 28, 1985**

You have requested an opinion concerning the apportionment of the appropriation of a general health district, pursuant to R.C. 3709.28, among the various bodies which compose the health district. Your particular concern involves a city which is situated within a township and remains part of the township. The city has its own health department, and residents of the city rely on that department. The township is included within the general health district of the county. There has been no union of, or contract between, the city health district and the general health district. Your question is whether, when the county auditor apportions the appropriation of the general health district among the various bodies which compose the general health district, he should include the taxable valuations situated within the city as part of the taxable valuations on which the apportionment for the township is based. It is my understanding that, in the case of the township in question, the apportionment for general health district purposes comes from the general levy for current expenses, within the ten-mill limitation, which is levied throughout the township. See R.C. 5705.02; R.C. 5705.05; R.C. 5705.28. See generally R.C. 3709.29; 1969 Op. Att'y Gen. No. 69-055; 1933 Op. Att'y Gen. No. 1545, vol. II, p. 1389.

Your particular question concerns the following language of R.C. 3709.28:

The aggregate appropriation [for a general health district], as fixed by the [county budget] 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." (Emphasis added.)

This provision speaks of the taxable valuations in the townships composing the general health district and might, if read alone, appear to include all taxable valuations in any township which is included in a general health district, including valuations of property in a city which is part of the township, even if that city has its own health department. It is, however, my judgment that, when viewed in light of the general scheme of law governing health districts, this provision should, instead, be read as applying to the taxable valuations of such portions of a township as constitute a part of the general health district and, thus, that taxable valuations within a city which has its own health department are not to be included in the valuations used for apportioning the appropriation of the general health district. See generally *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph 2) ("[s]tatutes relating to the same matter or subject. . . are in *pari materia* and should be read together to ascertain and effectuate if possible the legislative intent").

The general statutory scheme governing health districts is set forth primarily in R.C. Chapter 3709. R.C. 3709.01 states:

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 sections 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 [sic] or partially within such general health district.

In order to understand this provision, it is helpful to examine certain general principles concerning townships. Under Ohio law, the state is divided into units of local government known as townships. See R.C. Chapter 503; 1959 Op. Att'y Gen. No. 888, p. 584. When a city or village incorporates or annexes territory, see Ohio Const. art. XVIII, §§1, 2; R.C. 703.01; R.C. Chapters 707, 709, the territory remains part of the township or townships in which it is located, unless steps are taken to alter the township boundaries. See, e.g., State ex rel. Halsey v. Ward, 17 Ohio St. 543 (1867); 1984 Op. Att'y Gen. No. 84-051; 1977 Op. Att'y Gen. No. 77-031. There are two methods specifically designed for the alteration of township boundaries to conform to municipal boundaries. R.C. 503.07 permits the legislative authority of a municipal corporation to petition the board of county commissioners for a change of township lines, and R.C. 503.09 permits the electors who own land in the portion of a township outside of a municipal corporation to have such territory erected into a new township, excluding the territory within the municipal corporation. See also R.C. 503.02, 503.08, 503.14, 503.15. R.C. 503.09 states that, "[u]pon the erection of such new township, the territory lying within the limits of the municipal corporation in the original township shall be considered as not being located in any township." Under R.C. 703.22, "[w]hen the limits of a municipal corporation become identical with those of a township, all township offices shall be abolished," and the duties shall be performed by municipal officers. See generally Op. No. 84-051; 1954 Op. Att'y Gen. No. 4642, p. 648 at 652 (approved and followed, in part, in 1967 Op. Att'y Gen. No. 67-013; overruled, in part, on other grounds in 1959 Op. Att'y Gen. No. 91, p. 42) (R.C. 703.22 "does not purport to abolish the township, but merely the offices thereof"); 1944 Op. Att'y Gen. No. 7038, p. 406; 1944 Op. Att'y Gen. No. 6848, p. 227. Unless steps are taken to conform township boundaries to those of a municipal corporation, the township continues to function, and the residents of the municipal corporation have obligations both to that corporation and to the township in which they reside. See, e.g., State ex rel. Halsey v. Ward; Op. No. 84-051; 1977 Op. Att'y Gen. No. 77-097; Op. No. 77-031.

R.C. 3709.01 does not expressly recognize the fact that territory which constitutes a municipal corporation may also constitute a part of one or more townships. Instead, it speaks of "divid[ing]" the state into health districts, so that each city constitutes a city health district and "townships and villages" in each county constitute a general health district. This language has long been recognized as contemplating that the territory constituting city health districts is to be excluded from the territory of townships and villages which is designated as a general health district, whether or not a particular city remains part of one or more townships whose boundaries are not identical to those of the city. See, e.g., State ex rel. Village of Cuyahoga Heights v. Zangerle, 103 Ohio St. 566, 134 N.E. 686 (1921); 1983 Op. Att'y Gen. No. 83-067; 1961 Op. Att'y Gen. No. 2144, p. 195; 1956 Op. Att'y Gen. No. 7436, p. 819; 1941 Op. Att'y Gen. No. 3354, p. 9 (approved and followed in 1961 Op. Att'y Gen. No. 2540, p. 598). See also R.C. 3709.06. It is implicit throughout the statutory scheme governing health districts that a general health district does not include territory within a city unless a special arrangement is made to bring that territory into the district. See, e.g., R.C. 3709.01 ("there may be . . . a union of a general health district and one or more city health districts located [within] or partially within such general health district"); R.C. 3709.07; R.C. 3709.071; 1958 Op. Att'y Gen. No. 2294, p. 397. See generally R.C. 3709.081 (providing for contracts between general health districts and city health districts); Op. No. 83-067. Thus, for purposes of R.C. Chapter 3709, the term "township" may generally be considered to mean that portion of a township which is exclusive of cities. This reading of the statute is consistent with an earlier version, appearing

at G.C. 1261-16, see 1919 Ohio Laws, Pt. 1, 236 (H.B. 211), which excluded from general health districts only cities which had a population of twenty-five thousand or more, as follows: "The townships and municipalities in each county, exclusive of any city having twenty-five thousand population or more at the last preceding federal census, shall constitute a health district and . . . shall be known as . . . a general health district." See generally State ex rel. Village of Cuyahoga Heights v. Zangerle.

On the basis of the general statutory scheme governing health districts and the meaning of the word "township" as used throughout R.C. Chapter 3709, I conclude that the county auditor, in apportioning the appropriation for a general health district pursuant to R.C. 3709.28, should exclude from the taxable valuations of a township which is part of the general health district the taxable valuations of a city which is within that township and which has its own health department.<sup>1</sup> See generally R.C. 5705.49; 1968 Op. Att'y Gen. No. 68-063.

I am aware of the general rule that, when a statute authorizes the levy of a tax on all the taxable property of a township, the property of a municipal corporation within the township is included, unless that property is expressly excepted by statute from the levy. See, e.g., Op. No. 77-031; Op. No. 69-055; 1939 Op. Att'y Gen. No. 198, vol. I, p. 249; 1924 Op. Att'y Gen. No. 1213, vol. I, p. 82. It might be argued from this general rule that, since the township's apportionment for general health district purposes comes from the township's general levy for current expenses, and since the general levy for current expenses is levied upon all taxable property within the township in question, including that of the city with which you are concerned, the taxable property of the city should be included as part of the taxable valuations in the township for purposes of the apportionment of the appropriation for the general health district under R.C. 3709.28. I do not, however, believe that this result is appropriate.

Taxpayers who reside in both the city and the township face extra tax burdens, since they must support the expenses of both the city and the township. See, e.g., Op. No. 84-051; Op. No. 77-097; Op. No. 77-031; 1954 Op. No. 4642. Cf. 1945 Op. Att'y Gen. No. 354, p. 404. The city health district and the general health district are, however, entities separate from the townships and municipal corporations whose territory they encompass. See, e.g., State ex rel. Mowrer v. Underwood, 137 Ohio St. 1, 27 N.E.2d 773 (1940); 1975 Op. Att'y Gen. No. 75-036; 1972 Op. Att'y Gen. No. 72-088; 1951 Op. Att'y Gen. No. 934, p. 803. It is, therefore, reasonable that the duty of a township to support the general health district should extend only to the portion of the township which is served by the general health district. See generally 1956 Op. No. 7436. Any inequities suffered by city taxpayers in this situation might be resolved if township boundaries were conformed to those of the city pursuant to R.C. 503.07 or R.C. 503.09. They

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<sup>1</sup> R.C. 3709.28 contains the following provision which governs the apportionment of funds when a general health district has been united with or has contracted with a city health district located therein:

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.

would not, however, be rectified by attaching a different interpretation to R.C. 3709.28. So long as the city remains part of the larger township, the city residents must pay taxes to support the current expenses of the township. See generally 1959 Op. No. 888.

It is, therefore, my opinion and you are hereby advised, that, in apportioning the appropriation for a general health district pursuant to R.C. 3709.28, the county auditor should exclude from the taxable valuations of a township which is part of the general health district those taxable valuations situated within a city which is located within the township and which has its own health department.