OPINION NO. 2010-023

Syllabus:

2010-023

1. Payments to members of the board of health of a general health district under R.C. 3709.02(B) are health district expenses to be paid out of the district health fund established by R.C. 3709.28 and pursuant to the procedures set forth in R.C. 3709.31.
2. Members of the board of health of a general health district who are considered to be county employees by the Internal Revenue Service may continue to serve on the board of health and receive compensation pursuant to R.C. 3709.02.

To: Daniel G. Padden, Guernsey County Prosecuting Attorney, Cambridge, Ohio
By: Richard Cordray, Ohio Attorney General, September 17, 2010

The Cambridge-Guernsey County Health Department (the ''C-GC Health Department'') is a combined general health district formed under R.C. 3709.07. *See* 1995 Op. Att'y Gen. No. 95-030, at 2-149 n.1. As provided in R.C. 3709.02, the members of the board of health of the C-GC Health Department are paid for attend-

ing monthly board meetings. You indicated that members of the board of health historically have been treated as independent contractors, not employees, for federal tax purposes and, as such, have been issued Form 1099s, not Form W-2s. You also confirmed that members of the board of health are paid out of C-GC Health Department funds and that the Guernsey County auditor processes these payments.

Your opinion request states that the Internal Revenue Service (the "IRS") recently audited Guernsey County and concluded that members of the board of health of the C-GC Health Department are to be considered employees of Guernsey County. In this context, you ask whether members of the board of health of a general health district may continue to serve on the board and receive compensation pursuant to R.C. 3709.02, even though the IRS characterizes them as county employees for federal tax purposes.

Compensation for General Health District Board Members Generally

The State of Ohio is divided into health districts, which are classified as either "city health districts" or "general health districts." R.C. 3709.01. R.C. 3709.07 states "that one or more city health districts [may] unite with a general health district in the formation of a single district." A combined district formed under R.C. 3709.07 "shall constitute a general health district." As a result, unless otherwise provided, statutory provisions applicable to general health districts are also applicable to combined general health districts. 2008 Op. Att'y Gen. No. 2008-026, at 2-279 n.1; 1989 Op. Att'y Gen. No. 89-032, at 2-132; 1980 Op. Att'y Gen. No. 80-087, at 2-339. General health districts are independent political subdivisions and are not part of any county, township, or municipal government. 2008 Op. Att'y Gen. No. 2008-017, at 2-184; 1991 Op. Att'y Gen. No. 91-016, at 2-80; 1980 Op. Att'y Gen. No. 80-087, at 2-342.

General health districts typically have a "board of health consisting of five members to be appointed as provided in section 3709.03 and 3709.41 of the Revised Code." R.C. 3709.02(A). Combined general health districts are different in that the contracting parties can agree that the district be governed "by either the board of health or health department of one of the cities, by the board of health of the original general health district, or by a combined board of health." R.C. 3709.07. If a combined board of health is the chosen method, the contract creating the combined general health district "shall set forth the number of members of such board, their terms of office, and the manner of appointment or election of officers." *Id.*; *see also* R.C. 3709.02(A) ("[t]his paragraph does not apply to a combined board of health created under section 3709.07 of the Revised Code"). Regardless of their number and manner of selection, members of the board of health of a general health district are public officers who exercise a portion of the sovereignty of the state. *See* 1999 Op. Att'y Gen. No. 99-036, at 2-232 and 2-233.

The rules governing compensation for members of the board of health of a general health district are set forth in R.C. 3709.02(B), which states: "Each member of the board shall be paid a sum not to exceed eighty dollars a day for the member's attendance at each meeting of the board. No member shall receive compensation for attendance at more than eighteen meetings in any year." Members of the board of

health are also entitled to reimbursement for "actual and necessary travel expenses" in appropriate circumstances. R.C. 3709.02(C).[1]

Pursuant to statute, each general health district has "a separate fund," known as the "district health fund." R.C. 3709.28. "[M]oneys 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." 2008 Op. Att'y Gen. No. 2008-026, at 2-282 (quoting R.C. 3709.28); *see also* 1997 Op. Att'y Gen. No. 97-029, at 2-174 (all "[m]oneys received for the district are placed in the district health fund").[2] The county treasurer of the county constituting "all or the major portion of a general health district shall be the custodian of the health fund of the general health district." R.C. 3709.31.

The county auditor of the county constituting "all or a major portion of a general health district shall act as the auditor of the general health district," and "[e]xpenses of the board of health of a general health district shall be paid on the warrant of the county auditor issued on vouchers approved by the board of health." R.C. 3709.31; *see also generally* 1982 Op. Att'y Gen. No. 82-019 (discussing the approval of expense vouchers of general health districts). This process parallels the one established by R.C. 319.16 for county expenses. *See* 2009 Op. Att'y Gen. No. 2009-033, at 2-218 ("[u]nder R.C. 319.16, the county auditor is responsible for issuing warrants 'on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys.' The auditor 'shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners'" (quoting R.C. 319.16)).

Prior Attorney General opinions confirm general health districts are political subdivisions that, subject to one exception, are financed and operated independently from counties. In 1945 Op. Att'y Gen. No. 629, p. 790, at 791 and 792, the Attorney General discussed a board of county commissioners' authority to appropriate county funds to pay general health district expenses:

> General health districts are not county functions or agencies, but are separate and distinct departments or branches of the state sovereignty for which the county commissioners are in no way responsible, and the

[1] We had interpreted a prior version of R.C. 3709.02 to permit only the payment of actual and necessary travel expenses incurred by a board member, not exceeding eighty dollars a day, to attend a meeting of the board. *See* 1997 Op. Att'y Gen. No. 97-004 (syllabus); 1994 Op. Att'y Gen. No. 94-023 (syllabus). As amended by the General Assembly in 1995-1996 Ohio Laws, Part I, 900, 1323-24 (Am. Sub. H.B. 117, eff., in part, Sept. 29, 1995), R.C. 3709.02 now provides that board members are to be paid for attending board meetings. *See* 1997 Op. Att'y Gen. No. 97-005, at 2-28; 1997 Op. Att'y Gen. No. 97-004, at 2-20.

[2] For a complete discussion of the funding process for general health districts, see 2008 Op. Att'y Gen. No. 2008-026, at 2-282 n.6, and 1997 Op. Att'y Gen. No. 97-029, at 2-174.

> only statute I have been able to find that has any relation to your question is Section 1261-36, General Code [now R.C. 3907.34]. That is the section which authorizes the commissioners to furnish suitable quarters for any board of health whose jurisdiction extends over all or a major part of the county.
>
> Such being the present state of the law, and in view of the well settled rule in this State that county commissioners have only such authority in financial affairs as is given them by statute, you are advised that the county commissioners of Geauga county are without authority to appropriate county funds for the use of the board of health of the general health district in paying its operating expenses. (Internal citations omitted.)

See also 1997 Op. Att'y Gen. No. 97-029, at 2-175 (with the exception of R.C. 3709.34, a "health district is funded as an independent entity and is responsible for its own operations").

In 2008 Op. Att'y Gen. No. 2008-026, the Attorney General addressed the sale of personal property by a general health district and the proper treatment of the proceeds from those sales. The opinion noted that, even though "the county treasurer is the 'custodian' of the district health fund, and 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." *Id.* at 2-282 and 2-283 (citations omitted). Thus, it was concluded that 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," not the county's general fund. *Id.* (syllabus, paragraph 3); *see also* 1959 Op. Att'y Gen. No. 935, p. 639 (syllabus, paragraph 2) (funds derived from the sale of automobiles owned by a general health district "should be placed in the health fund of the district").

We agree with the well reasoned conclusions in these prior opinions. A general health district is a political subdivision separate from the county that, subject to the lone exception in R.C. 3709.34, is operated and funded independently from the county. Payments to members of the board of health of a general health district under R.C. 3709.02(B) are a health district expense, not a county expense. Accordingly, these amounts must be paid out of the district health fund established by R.C. 3709.28 and pursuant to the procedures set forth in R.C. 3709.31.

Federal Income Tax Withholding

Turning to the IRS's actions, you have provided us a copy of Form 886-A, "Explanation of Items," which was prepared by an IRS agent in conjunction with the audit of Guernsey County. In order to properly understand the "Explanation of Items," however, some background on the Internal Revenue Code (the "Code") is necessary, specifically as it relates to withholding and reporting requirements for federal income and employment taxes.

The federal income tax withholding scheme is set forth in Title 26, Subtitle

C, Chapter 24, of the United States Code. *See* I.R.C. §§ 3401-3406 (West 2002 and Supp. 2010).

> Income tax withholding is a ''pay-as-you-go'' method of collecting the estimated tax due from employees on wages paid to them. If withholding is required, the employer or whoever has control over the payment of wages to his employees has the burden of deducting the proper amount of withholding from the employee's paycheck and then paying it to the government. When the employee files his individual return for the year, the amount collected is treated as a credit against his tax liability.

1-1 *Bender's Payroll Tax Guide* § 1.20 (Matthew Bender & Co., Inc. 2009).

The basic withholding requirement is set forth in I.R.C. § 3402(a)(1) (West Supp. 2010). It states that, unless provided otherwise, ''every employer making payment of wages shall deduct and withhold upon such wages a tax determined'' by the Secretary of the Treasury. *Id.* In turn, I.R.C. § 3401(a) (West Supp. 2010) defines ''wages,'' in part, as ''all remuneration . . . for services performed by an employee for his employer.'' *See also* 5-73 *Federal Income, Gift and Estate Taxation* § 73.02 (Matthew Bender & Co., Inc. 2010) (''[t]he basic statutory provision, I.R.C. Section 3401(a), is phrased broadly, with particularization being left to the exceptions'').

An ''employer'' is defined, in part, as ''the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person.'' I.R.C. § 3401(d) (West Supp. 2010). However, if the entity for whom the employee performs services ''does not have control of the payment'' of wages, then the ''employer'' is the ''person having control of the payment of such wages.'' I.R.C. § 3401(d)(1); *see also* 5-73 *Federal Income, Gift and Estate Taxation* § 73.03[1] (the ''obligations of withholding, filing returns, paying tax, and furnishing employee receipts fall upon the person who has control of the payment of wages''); *In re Southwest Restaurant Sys., Inc.*, 607 F.2d 1237 (9th Cir. 1979) (debtor corporation was responsible for income tax withholdings for employees of three separate corporations under common ownership because the debtor corporation controlled the payment of wages).

The Code also has special rules for withholding federal income taxes from employees of political subdivisions.

> If the employer is the United States, or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the . . . political subdivision, . . . or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

I.R.C. § 3404 (West 2002). Unlike § 3401(d)(1), § 3404 does not the change the identity of the ''employer,'' but instead authorizes someone other than the employer to withhold the tax.

Social Security Tax, or FICA, Withholding

The federal social security scheme is set forth in Title 26, Subtitle C, Chapter 21, of the United States Code. *See* I.R.C. §§ 3101-3128 (West 2002 and Supp. 2010).

> The Federal Insurance Contributions Act imposes taxes on both the employer and the employee. These taxes provide the funds for two of the federal government's principal social security programs: old-age, survivor's and disability insurance (OASDI) and hospital insurance (Medicare). The employer is responsible for deducting from the employee's paycheck the employee's portion of the tax, and paying it over to the government along with a matching amount imposed as a tax on the employer. Self-employed persons are not subject to the social security tax rules, but are required to pay a self-employment tax.

1-1 *Bender's Payroll Tax Guide* § 1.40. These taxes are sometimes referred to as FICA taxes and fall under the general rubric of employment taxes. *Id.*[3]

FICA taxes are imposed on ''wages'' received with respect to ''employment.'' I.R.C. §§ 3101(a)-(b) (West Supp. 2010) (individual's portion of tax); I.R.C. §§ 3111(a)-(b) (West Supp. 2010) (employer's portion of the tax). In turn, ''employment'' is defined, subject to numerous exceptions, as ''any service'' performed ''by an employee for the person employing him,'' I.R.C. § 3121(b) (West Supp. 2010), and an ''employee'' is ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.'' I.R.C. § 3121(d)(2). The ''employer'' is required to withhold and pay the tax. I.R.C. § 3102(a); §§ 3111(a)-(b). Similar to § 3404, if the employer is a political subdivision of a state, the withholding and tax payments imposed by § 3101 and § 3111 may be made by ''any officer'' ''having control of the payment'' or ''appropriately designated.'' I.R.C. § 3126 (West 2002).

Form W-2 and Form 1099

''All persons engaged in a trade or business and making payment . . . to another person . . . of $600 or more in any taxable year'' are required to submit

[3] We include this brief overview of FICA taxes because the ''Explanation of Items'' references FICA-specific statutes and regulations. It should also be noted that, for purposes of R.C. Chapter 145 and the Public Employees Retirement System (PERS), the statutory definition of ''public employee'' specifically excludes members of the board of health of a general health district. R.C. 145.012(A)(7). This opinion, however, does not address whether payments to members of a board of health are subject to FICA taxes.

returns "in such form and manner and to such extent as may be prescribed by" the Secretary of the Treasury. I.R.C. § 6041(a) (West Supp. 2010); *see also* 26 C.F.R. § 1.6041-1(a) (2010). While the term of art is "persons engaged in a trade or business," the reporting requirement applies to state and local governments and activities deemed not for profit. *See* 26 C.F.R. §§ 1.6041-1(b) and (i); 1-5 *Bender's Payroll Tax Guide* § 5.65[1][b]. Similar to the withholding requirements, there are special reporting rules for political subdivisions. Mirroring the provisions for federal income and FICA taxes, informational returns are to be prepared by the officer or employee either "having control of" the payment of compensation or "appropriately designated" to prepare the returns. 26 C.F.R. § 1.6041-1(i).

For reporting purposes, a critical distinction exists between Form W-2 and Form 1099. The default is that payments to an individual must be reported on Form 1099, 26 C.F.R. § 1.6041-1(a)(2) (2010), but "[w]ages, as defined in section 3401, paid to an employee are required to be reported on Form W-2." *Id.* at § 1.6041-2(a)(1) (2010); *see also* 2009 Op. Att'y Gen. No. 2009-035, at 2-245 ("[u]nder federal income tax law, IRS Form W-2 indicates an employer-employee relationship . . . , whereas IRS Form 1099 is an informational form used for persons who are self-employed (including independent contractors)"); 1992 Op. Att'y Gen. No. 92-005, at 2-14 ("Form W-2 is a federal income tax form prescribed by the Secretary of the Treasury for the reporting by an employer of the wages and other compensation paid to an employee"). A Form W-2 also requires the reporting of wages and taxes for FICA purposes. *See* 26 C.F.R. §§ 31.6051-1(a)(1)(e)-(f) (2010).

Thus, classifying an individual as an employee will affect both withholding and reporting requirements. For employees, the employer (or designated official) is responsible for withholding federal income taxes and, if applicable, withholding and paying FICA taxes on wages paid. These activities are reported on Form W-2. By contrast, payments to non-employees are reported on Form 1099, and there is no obligation on the person making payments to withhold federal income or withhold and pay FICA taxes. *See* 2009 Op. Att'y Gen. No. 2009-035, at 2-245.

Effect of IRS Statements in the "Explanation of Items"

With this background, the import of the "Explanation of Items" comes into focus. The conclusion section of the "Explanation of Items" states:

> Board of Health members for County of Guernsey are appointed officials of a political subdivision of the State of Ohio. They are paid out of the County's treasury and are not fee based public officials. They do meet the definition of a public official. Their earnings are not from a "trade or business" and are not subject to self-employment taxes. These Board of Health members are employees of the County of Guernsey.

You also indicated the IRS instructed Guernsey County that members of the board of health should be issued Form W-2s, which is consistent with the conclusion that they should be treated as employees, earning a salary, rather than as self-employed persons.

Your opinion request asks whether members of the board of health of the C-GC Health Department may continue to serve on the board and receive compensation pursuant to R.C. 3709.02, notwithstanding the IRS's actions. We see two potential conflicts between the "Explanation of Items" and Ohio law. First, the "Explanation of Items" states that members of the board of health of the C-GC Health Department are paid out of the "County's treasury." As explained above, members of the board of health are paid from the separate district health fund created under R.C. 3709.28, which is not part of the county treasury. Second, the "Explanation of Items" states that "Board of Health members are employees of the County of Guernsey." As also explained above, general health districts are separate and distinct political subdivisions, and members of the board of health are public officers that carry out their statutory responsibilities under the auspices of the general health district, not the county.[4]

In responding to this inquiry, it is helpful to place the IRS's authority and the "Explanation of Items" in proper context. The IRS is a bureau of the Department of Treasury and is tasked with the enforcement of the Code. 26 C.F.R. § 601.101(a) (2010). As part of its duties, the IRS has the authority to audit, or examine, tax returns. 26 C.F.R. § 601.105 (2010). An audit is "merely an examination of an individual's tax return to verify income, deductions, credits, exclusions, and other tax benefits to ensure that the tax liability reported is in fact the correct tax liability." Ira L. Shafiroff, *Internal Revenue Service Practice and Procedure Deskbook* § 3:1 (Practising Law Institute 3d ed. 2007).

At the conclusion of an examination, the taxpayer is often given the immediate opportunity to either agree or disagree with the IRS agent's proposed adjustments. 26 C.F.R. § 601.105(b)(4). If there is agreement, the taxpayer usually will be asked to sign a Form 870 and pay any additional taxes that may be owed. *Id.*; *see also* 1-7 *Federal Tax Practice and Procedure* § 7.04[1][a] (Matthew Bender & Co., Inc. 2010). A Form 870 neither precludes the IRS from asserting additional deficiencies within the statute of limitations, nor bars the taxpayer from timely

[4] The statement that "Board of Health members are employees of the County of Guernsey" could also imply that Guernsey County is the "employer" of board of health members for certain federal tax purposes, but the "Explanation of Items" does not specify whether this is the case. Because a county auditor processes the payments to board of health members, R.C. 3709.31, one might argue that Guernsey County "controls" these payments, I.R.C. § 3401(d)(1), and, therefore, is the employer of the board of health members for federal income tax purposes. The basis for making a similar determination for FICA purposes, however, is unclear. Chapter 21 (FICA) of the Code does not contain a provision comparable to § 3401(d)(1). It is also possible for there to be one employer for federal income tax purposes and a different employer for FICA purposes. *See* I.R.S. Priv. Ltr. Rul. 199918056, ¶ 59 (Nov. 12, 1998); Rev. Rul. 73-253, 1973-1 C.B. 414; Rev. Rul. 69-316, 1969-1 C.B. 263. Ultimately, though, we express no view on the interpretation of federal law in the "Explanation of Items," and it is beyond the scope of this opinion to provide federal tax advice.

seeking a refund. 26 C.F.R. § 601.105(b)(4); *see also Smith v. United States*, 328 F.3d 760, 766-67 (5th Cir. 2003); 1-7 *Federal Tax Practice and Procedure* §§ 7.04[1][a]-[b].

If the taxpayer disagrees with the IRS agent's proposed adjustments, the taxpayer will receive a package from the IRS including, among other items, a ''thirty-day letter'' and a copy of the examination report. A thirty-day letter notifies the taxpayer that she has thirty days from the date of the letter to either agree to the adjustments or appeal. *See* Internal Revenue Service, *Publication No. 556: Examination of Returns, Appeal Rights, and Claims for Refund* at 5 (Catalog No. 15104N, May 2008) (hereinafter ''*IRS Publication No. 556*''); *Internal Revenue Service Practice and Procedure Deskbook* § 3:4. Pursuant to IRS guidelines, the audit report itself can consist of numerous items, including Form 886-A, ''Explanation of Items.'' *See Internal Revenue Manual* § 4.8.10.4.1, ''30-Day Letters'' (Aug. 28, 2009). As its name suggests, the purpose of an ''Explanation of Items'' is to explain the examiner's basis for proposed adjustments to the taxpayer's return. *See id.* at § 4.10.8.11.2, ''Explanation of Items'' (Aug. 11, 2006); *id.* at § 4.23.10.12.12, ''Explanation of Adjustments: Form 886-A, Form 5701, and Reengineering Lead Sheet Copies'' (Apr. 10, 2009).

Upon receipt of the audit report and thirty-day letter, the taxpayer again has the option of agreeing to the proposed adjustments and executing a Form 870. *See Internal Revenue Service Practice and Procedure Deskbook* §§ 3:4 and 4:3:2; *IRS Publication No. 556* at 5. Should the taxpayer wish to appeal the examiner's proposed adjustments, she has recourse both within the IRS and to the United States Tax Court. *See generally Internal Revenue Service Practice and Procedure Deskbook* § 3:4; 1-7 *Federal Tax Practice and Procedure* § 7.04; *IRS Publication No. 556* at 8-13.

As this discussion implies, the IRS's authority is circumscribed in numerous ways. First, the IRS's authority extends only to the laws it is empowered to enforce—specifically, the Code and related regulations promulgated by the Department of Treasury. *See Royal Indem. Co. v. United States*, 313 U.S. 289, 294 (1941) (subordinate United States officials have only that power which ''has been conferred upon them by Act of Congress or is to be implied from other powers so granted'' (citations omitted)); *Pan American Petroleum Corp. v. Pierson*, 284 F.2d 649, 655 (10th Cir. 1960) (''[t]he Secretary of the Interior has no powers except those granted or those necessarily implied from granted powers''). To the extent an executive agency exceeds or threatens to exceed its statutory authority, that agency is subject to judicial oversight. *See, e.g., Smith v. Payne*, 194 U.S. 106, 108-09 (1904) (courts have authority to review decisions by executive agencies in excess of their authority); *U.S. Dep't of Agric. v. Hunter*, 171 F.2d 793, 795 (5th Cir. 1949) (if the secretary of an executive department ''by affirmative act exceeds his lawful authority or threatens to do so, to the injury of established rights, he may be enjoined, for in such circumstances he is not truly representing the Government'' (citations omitted)).

In addition, an ''Explanation of Items'' is merely a report, prepared by an

IRS agent in conjunction with an audit, explaining the basis for proposed adjustments to a taxpayer's return. While an "Explanation of Items" may cause a taxpayer to enter into an agreement with the IRS, it is not a judicial determination that must be given preclusive effect. *See, e.g., United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966) (an agency decision will be given preclusive effect only if "the parties have had an adequate opportunity to litigate" and the administrative agency was "acting in a judicial capacity"); *Hicks v. De La Cruz*, 52 Ohio St. 2d 71, 74, 369 N.E.2d 776 (1977) (an issue of fact or law must be "actually . . . litigated and determined by a valid and final judgment" in order to have preclusive effect).

Further, the Code is a statutory scheme distinct from R.C. Chapter 3709. It is axiomatic that a determination in one area of the law is not necessarily binding for other purposes. *See, e.g., Reyes v. Sullivan*, 915 F.2d 151, 154 (5th Cir. 1990) (the findings of a state agency are not binding on an administrative law judge for purposes of determining eligibility for Social Security disability benefits); *Myers v. Toledo*, 110 Ohio St. 3d 218, 2006-Ohio-4353, 852 N.E.2d 1176, at ¶ 18 (2006) (federal case law interpreting Fed. R. Civ. P. 35, while persuasive, is not controlling as to the interpretation of Ohio R. Civ. P. 35); *Aungst v. Ohio Bureau of Employment Servs.*, No. CA-1860, 1980 Ohio App. LEXIS 13885 at *8 (Richland County July 7, 1980) ("even if a certain sum is determined to be wages or remuneration under federal law, such a determination is not controlling on the question of whether the sum is remuneration under Ohio's Employment Services law"). In addition, the Code does not preempt R.C. Chapter 3709. *See* 1993 Op. Att'y Gen. No. 93-002, at 2-15 (articulating the three well-established ways in which state law may be preempted—(1) if Congress "expressly preempt[s] state authority," (2) if "state law conflicts with or frustrates federal law or its objectives," or (3) "if a scheme of federal regulations is so pervasive as to leave no room for the states to supplement it" (citations omitted)).

Finally, the United States Supreme Court has long instructed that "most words admit of different shades of meaning, susceptible of being expanded or abridged to conform to the sense in which they are used." *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934). Accordingly, it "is not unusual for the same word to be used with different meanings," even in the same act. *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932) (the term "trade" could have a more expansive meaning in § 3 of the Sherman Act than in § 1); *see also United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 212-14 (2001) (the phrase "wages paid" has a different meaning when used in Title 26 of the United States Code compared to when used in Title 42); note 4, *supra* (explaining that the term "employer" can have multiple meanings within the Code). Thus, it is possible for a person to be an employee or employer for certain tax purposes under federal law, but not for other purposes under state law.

As the preceding discussion demonstrates, the IRS cannot make binding pronouncements regarding the treatment of members of a board of health for purposes of Ohio law. Thus, the IRS's statement that members of the board of health of the C-GC Health Department are "paid out of the County's treasury"

does not negate the provisions in R.C. Chapter 3907 regarding the payment of board of health members. Further, the status of members of the board of health as ''employees of the County of Guernsey'' for certain federal tax purposes cannot alter the fundamental authority and independent nature of general health districts and their board members under state law. Accordingly, members of the board of health of a general health district who are considered to be employees of the county by the IRS may continue to serve on the board and receive compensation pursuant to R.C. 3709.02.

Conclusions

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

1. Payments to members of the board of health of a general health district under R.C. 3709.02(B) are health district expenses to be paid out of the district health fund established by R.C. 3709.28 and pursuant to the procedures set forth in R.C. 3709.31.
2. Members of the board of health of a general health district who are considered to be county employees by the Internal Revenue Service may continue to serve on the board of health and receive compensation pursuant to R.C. 3709.02.