

June 7, 2022

The Honorable Colleen M. O'Toole
Ashtabula County Prosecuting Attorney
25 West Jefferson Street
Jefferson, Ohio 44047

SYLLABUS:

2022-008

1. If a board of county commissioners, pursuant to R.C. 339.72(A)(1), designates a communicable-disease-control program operated by the board of health of a general health district as a tuberculosis-control unit for the county, the board of county commissioners is neither required nor permitted to enter into a contract with the general health district for the provision of these services.
2. If a board of county commissioners, pursuant to R.C. 339.72(A)(1), designates a communicable-disease-control program operated by the board of health general health district as a tuberculosis-control unit, the general health district cannot refuse to execute the duties of the tuberculosis-control unit.



DAVE YOST

OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2022-008

The Honorable Colleen M. O'Toole
Ashtabula County Prosecuting Attorney
25 West Jefferson Street
Jefferson, Ohio 44047

Dear Prosecutor O'Toole:

You have requested an opinion regarding tuberculosis-control units (Units). I have framed your questions as follows:

1. Is a board of county commissioners (Board) required or permitted to enter into a contract with a general health district (Health District), if the Board has designated the Health District as a Unit pursuant to R.C. 339.72(A)(1)?
2. If designated as the Unit, can the Health District refuse to provide the services of a Unit?

For the reasons that follow, I conclude that the answer to both questions is "no."

I

Pursuant to R.C. 339.72, the Board is required to designate a Unit for the county and may choose one entity from the following to serve in this role: a communicable-disease-control program operated by the board of health of a city or general health district under R.C. 3709.22; a tuberculosis clinic established by the Board under R.C. 339.76; or the hospital with which the Board has already contracted for tuberculosis-clinic services under R.C. 339.75. R.C. 339.72(A)(1)-(3); *see also*, 2014 Op. Att’y Gen. No. 2014-024, at 2-215 to 2-218.

R.C. Chapter 339 distinguishes between the Unit and tuberculosis clinics or clinic-service providers. The Unit performs specific duties outlined by statute: tracking cases, referring afflicted patients to treatment providers, communicating patient conditions to the Ohio Department of Health, monitoring strains of tuberculosis, and enforcing treatment regimens. R.C. 339.73; R.C. 339.74; R.C. 339.78; R.C. 339.79; R.C. 339.80; R.C. 339.82; R.C. 339.85; R.C. 339.87; R.C. 339.89. The tuberculosis clinics and clinic-service providers employ physicians and nurses to prevent, cure, and provide treatment and therapy for tuberculosis. R.C. 339.75; R.C. 339.76. As such, any mention of a clinic or treatment means only a clinic or treatment and does not include the Unit. *See State ex rel. Rocco v. Cuyahoga Cty. Bd. of Elections*, 151 Ohio St.3d 306, 308, 88 N.E.3d 924 (2017) quoting *Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (“when certain language is used in one instance and wholly different language is used in another

instance, it is ‘presumed that different results were intended”).

I note that a tuberculosis clinic or clinic-service provider designated as a Unit under R.C. 339.72(A) may itself, by virtue of the nature of each entity, offer tuberculosis treatment to afflicted patients. *See* R.C. 339.73 (a Unit may provide the treatment or may make referrals to other entities for treatment). Our conclusions do not relate to these treatment services, which may specifically be provided for by contract or established by statute. R.C. 339.75; R.C. 339.76.

II

A

You first ask whether contracts are permitted or required with the Health District for Unit services.

The legislature was intentional with its language regarding contracts in R.C. Chapter 307 (Board of County Commissioners-Powers), R.C. Chapter 339 (Hospitals), and R.C. Chapter 3709 (Health Districts), and they must be read *in pari materia* for consistency. *See In re Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148, ¶ 27; *United Tel. Co. of Ohio v. Limbach*, 71 Ohio St.3d 369, 372, 1994 Ohio 209, 643 N.E.2d 1129 (1994). Throughout the entirety of R.C. Chapter 339, the only mention of contracting is in R.C. 339.75 for tuberculosis treatment, and the only discussion of an “agreement” is in R.C. 339.72(A) when multiple boards of county commissioners are permitted to jointly create a Unit. And while the Board and

Health District are separate entities with the general ability to enter into contracts, and the Revised Code has specific provisions for each to enter contracts with the other, R.C. 339.72 does not mention contracting for Unit services. *See* R.C. 3709.36 (the board of health of a city or general health district is a body politic and capable of contracting and being contracted with); R.C. 3709.282 (“The board of health of any city or general health district may participate in, receive or give financial and other assistance, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program...”); R.C. 307.15(A)(1) (“Contracts with other governmental entities”: the legislative authority of a health district and board of county commissioners may enter into an agreement whereby each may perform duties that the other normally performs); R.C. 307.153 (“Agreements with board of health”: the board of health of a general health district and board of county commissioners may enter into agreement whereby the former may perform duties that the latter normally performs); R.C. 339.75 (“county commissioners may contract” for tuberculosis treatment only).

If a contract or an agreement was required for the establishment of a Unit, the legislature would have used those terms. Instead, R.C. 339.72 uses the terms “designating”, “designated”, and “designate” as it relates to the Unit. “Designate” is defined as “to select and set aside for a duty, office, or purpose.” *American Heritage Dictionary of the English Language* 491 (5th Ed.2011).

Therefore, a contract is not required; and, the use of “shall” with the directive for the Board to designate a

Unit, with no option given to contract instead of a designation, suggests a contract is also not permitted.

B

Your request also notes that R.C. 339.72(A)(1) does not address payment for Unit services provided by the Health District. The lack of payment provisions supports my conclusion that a contract is not required or permitted.

The distinction between tuberculosis clinics and Units is relevant when considering statutes pertaining to payment and funding of tuberculosis related services. The plain language of R.C. 339.75 and R.C. 339.76 states only that costs shall be paid for clinics and treatment, and does not mention the costs of the Unit. *See also* R.C. 5705.10; R.C. 5705.20. Again, the legislature was intentional with its language and there is no provision for Unit funding. *See In re Duke*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148 at ¶ 27.

Further, it follows from the analysis in subsection A of this opinion that the statutory requirement in R.C. 307.153 for agreements between the Board and the Health District to “provide, either in specific terms or by prescribing a method for determining the amounts, for any payments to be made,” is inapt because there is no agreement permitted or required in R.C. 339.72(A)(1).

From a practical standpoint, the duties of a Health District communicable-disease-control program in R.C. 3709.22—the Health District entity eligible for Unit

designation in R.C. 339.72(A)(1)—align closely with the responsibilities outlined in R.C. Chapter 339 for a Unit. As the Health District receives funding via regular appropriation and is empowered to levy taxes and receive emergency funds to operate generally, it is counterintuitive that it could assess additional fees or require the Board to pay for Unit duties comparable to those that it is already required to perform. R.C. 3709.28; R.C. 3709.29; R.C. 3709.30.

III

Your second question asks whether the Health District, if designated as a Unit, can refuse to execute its statutory duties.

The entity that the Board chooses to serve as the Unit “shall accept that designation and fulfill its duties as the tuberculosis-control unit specified under R.C. 339.71 to 339.89.” R.C. 339.72(B).

The use of the term “shall” indicates that there is no discretion for the designee, and it may not choose to avoid serving as the Unit or executing its duties. *See, State v. Golphin*, 81 Ohio St.3d 543, 545-46, 692 N.E.2d 608 (1998) (“use of the term ‘shall’ in a statute...connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary.”). The Health District, if designated Unit, cannot refuse to discharge those duties.

Conclusion

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

1. If a board of county commissioners, pursuant to R.C. 339.72(A)(1), designates a communicable-disease-control program operated by the board of health of a general health district as a tuberculosis-control unit for the county, the board of county commissioners is neither required nor permitted to enter into a contract with the general health district for the provision of these services.
2. If a board of county commissioners, pursuant to R.C. 339.72(A)(1), designates a communicable-disease-control program operated by the board of health general health district as a tuberculosis-control unit, the general health district cannot refuse to execute the duties of the tuberculosis-control unit.

Respectfully,



DAVE YOST
Ohio Attorney General