

2294

HEALTH DISTRICT—SPECIAL LEVY FOR EXPENSES—
§3709.29 R.C.—LEVY ON PROPERTY SITUATED IN THE GEN-
ERAL HEALTH DISTRICT AND *NOT* IN CONTRACTING MU-
NICIPALITIES.

SYLLABUS:

1. If the estimated expenses of a general health district are in excess of revenue available within the ten-mill limitation, a special levy may be made pursuant to the provisions of Section 3709.29, Revised Code.

2. A special levy for a general health district, imposed by a vote of the electors as provided in Section 3709.29, Revised Code, would have no application to taxable real property situated in a city receiving public health service from the general health district by contract, and such special levy should be submitted to the electors of the general health district only, which district would not include cities furnished public health service on such contract basis.

Columbus, Ohio, July 1, 1958

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

Your request for my opinion reads:

"The Board of Health of the Summit County General Health District is and has been pressed for necessary operating funds. The Board of Health of the District would like to submit to the electors of the District a proposed tax levy for the purpose of providing necessary funds for current expenses.

"The Board has by contract agreed to furnish public health services to three municipal corporations which have been raised to the rank of cities in Summit County. The three municipal corporations in question are Cuyahoga Falls, Barberton and Tallmadge. The public health services are furnished to these three municipal corporations on a contract basis.

"Since the three municipal corporations are not actually a part of the Health District, and since health services are furnished to the three Cities on a contract basis, the Board has requested my opinion as to whether or not the proposed levy must be submitted to the electors of the General Health District and the electors of the three municipal corporations of the General Health District exclusive of the three municipal corporations.

"I therefore respectfully request your opinion on the following questions:

1. May a levy for necessary current expenses of a General Health District be submitted to the electors of the District?
2. In the event that such a levy may be submitted, shall it be submitted to the electors of the General Health District including any municipal corporations that are furnished public health services by the Board of the Health District on a contract basis, or shall the levy be submitted to the electors of the General Health District, excluding any municipal corporations which are furnished public health services on a contract basis?"

The two questions in your letter of inquiry will be considered in the order in which they have been presented.

Section 3709.28, Revised Code, provides in applicable part:

"The board of health of a general health district shall, annually, on or before the first Monday of April, estimate in item-

ized from the amounts needed for the current expenses of such district for the fiscal year beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submitted to the county budget commission which may reduce any item in such estimate but may not increase any item or the aggregate of all items."

Section 3709.29, Revised Code, insofar as it is here pertinent, reads:

"If the estimated amount of money necessary to meet the expenses of a general health district program will not be forthcoming to the board of health of such district out of the district health fund because the taxes within the ten-mill limitation will be insufficient, the board of health shall certify the fact of such insufficiency to the board of county commissioners of the county in which such district is located. Such board of county commissioners is hereby ordained to be a special taxing authority for the purposes of this section only, and, notwithstanding any other law to the contrary, the board of county commissioners of any county in which a general health district is located is the taxing authority for such special levy outside the ten-mill limitation. The board of county commissioners shall thereupon, in the year preceding that in which such health program will be effective, by vote of two thirds of all the members of said body, declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such district within the county, and that it is necessary to levy a tax in excess of such limitation in order to provide the board of health with sufficient funds to carry out such health program. * * *"

My immediate predecessor in office had occasion to consider a tax levy for a general health district in Opinion No. 2569, Opinions of the Attorney General for 1953, p. 163, wherein he stated at page 165:

"It will be noted that the budget referred to in Section 1261-40 (Section 3709.28, Revised Code) is intended to cover the amount needed for the entire expenses of the year following. The estimate is submitted by the board of health but is subject to reduction by the budget commissioners.

"Section 1261-40a (Section 3709.29, Revised Code) contemplates that the amount that will be realized by the board of health for its operation, out of the tax levy based on such revised budget, together with the state subsidy provided by Section 1241-39, General Code, (obviously Section 1261-39, was intended—now Section 3709.32, Revised Code) may be found insufficient for its needs, by reason of the ten mill limitation contained in Article XII, Section 2, of the Constitution.

“This insufficiency, so caused, is the sole basis for a special levy approved by the electors of the health district. And that fact, which must be found and declared by the board of health, is in my opinion, not only the basis, but also the measure of the right to secure the special levy.” (Parenthetical matter added)

I agree with the former Attorney General’s interpretation of the applicable law as quoted from the above cited opinion. Therefore, in specific answer to your first question, you are advised that if the estimated expenses of a general health district are in excess of the revenue available within the ten-mill limitation, a special levy may be made pursuant to the provisions of Section 3709.29, Revised Code.

Coming now to consider the second question you have presented, it should be noted initially that a city constitutes a health district and the townships and villages in each county are combined into a health district known as a “general health district.” Section 3709.01, Revised Code. I assume that the three cities mentioned in your request have contracted for public health service with the Summit County General Health District pursuant to Section 3709.08, Revised Code, which reads:

“A city constituting a city health district may enter into a contract for public health service with the legislative authority or managing officer of another city or with the district advisory council of the general health district. Such proposal shall be made by the city seeking health service and shall be approved by a majority of the members of the legislative authority. Such a contract shall:

- (A) State the amount of money to be paid by the city for such service and how it is to be paid;
- (B) Provide for the amount and character of health service to be given by the city health district;
- (C) State the date on which such service shall begin;
- (D) State the length of time such contract shall be in effect.

“No such contract shall be in effect until the department of health determines that the health department of the city or general health district providing such service is organized and equipped to provide adequate health service. After such contract has been approved by the department of health, the board of health or health department of the city or general health district providing such service shall have, within the city health district receiving such service, all the powers and shall perform all the duties required of the board of health of a city health district.”

Other statutes provide for the merger of a city health district with a general health district and of from two to five general health districts into one general health district. Sections 3709.07 and 3709.10, Revised Code. While it might be said that a city could become a part of a general health district for the purpose of public health service if it were to unite with a general health district pursuant to the provisions of Section 3709.07, Revised Code, it is apparent that a city which contracts to receive public health service from the district advisory council of a general health district, in accordance with Section 3709.08, Revised Code, does not thereby become a part of such general health district. On the contrary, such a city would retain its autonomous status and its only relationship with the general health district which furnishes it with public health service is purely contractual. It is by contract that the two entities establish, among other things, the amount the city is to pay for the public health service received. Section 3709.08 (A), Revised Code.

The board of county commissioners is made the taxing authority for a general health district for the purpose of carrying into effect the provisions of Section 3709.29, Revised Code, and, therefore, the submission of a levy outside the ten-mill limitation would be made in accordance with Section 5705.25, Revised Code, which reads in part:

“A copy of any resolution adopted as provided in section 5705.19 of the Revised Code shall be certified by the taxing authority to the board of elections of the proper county not later than four p.m. of the ninetieth day before the day of the general election in any year, and said board shall submit the proposal to the *electors of the subdivision* at the succeeding November election. Such board shall make the necessary arrangements for the submission of such question *to the electors of such subdivision*, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for the election of county officers. * * *” (Emphasis added)

Since, as I have indicated above, a city receiving public health service from a general health district on a contractual basis is not a part of such general health district, it follows that the residents of such city are not “electors of the subdivision (general health district)” within the meaning of Section 5705.25, Revised Code.

It is my opinion, in answer to your second question, that a special levy for a general health district, imposed by a vote of the electors as provided in Section 3709.29, Revised Code, would have no application to

taxable real property situated in a city receiving public health service from the general health district by contract, and such special levy should be submitted to the electors of the general health district only, which district would not include cities furnished public health service on such contract basis.

Respectfully,

WILLIAM SAXBE

Attorney General