

**OPINION NO. 83-067****Syllabus:**

The board of health of a general health district may not contract with a city or city health district in order to provide the city or city health district public health services when such city or city health district is not located totally or partially within a county served by the general health district, unless such services are provided in accordance with the establishment and operation of a federal program or are provided to control air pollution.

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**To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 1, 1983**

I have before me your request for my opinion on the following question:

May a city or a city health district enter into a contract with a general health district for the provision of certain public health services, even though the city is not located totally or partially within such general health district?

In your letter of request you state:

[A number of cities in neighboring counties] had merged with their respective general health districts in accordance with R.C. §3709.07, [but] they have served notice of their intent to withdraw from those mergers and . . .re-establish separate city health districts. After the city health districts are re-established, representatives from the cities desire to enter into contracts with the Montgomery County Combined General Health District for certain public health services; e.g., food service inspections, nuisance inspections, and home health care services.

Because, as prosecuting attorney, you have the duty to advise the general health district, see R.C. 3709.33, I will address your question in terms of a general health district's authority to contract with a city or city health district not located within the general health district.

Before turning to your specific question, I note that, "[e]ach city constitutes a health district and [is] known as a 'city health district,'" and that, "[t]he townships and villages in each county shall be combined into a health district [which] shall be known as a 'general health district.'" R.C. 3709.01. Two or more contiguous general health districts, not to exceed five, may combine to form a general health district. R.C. 3709.01; R.C. 3709.10. Two or more contiguous city health districts may join to form a city health district. R.C. 3709.01; R.C. 3709.051. One or more city health districts located partially or totally within a general health district may join with the general health district to form a general health district. R.C. 3709.01; R.C. 3709.07; R.C. 3709.071. Boards of health of city health districts, see R.C. 3709.05, and boards of health and district advisory councils of general health districts, see R.C. 3709.02; R.C. 3709.03, are creatures of statute and have only those powers which are expressly granted by statute, or necessarily implied therefrom. See 1980 Op. Att'y Gen. No. 80-089; 1973 Op. Att'y Gen. No. 73-112.

In your letter of request, you have drawn my attention to two statutes, R.C. 3709.08 and R.C. 3709.281. After examining both statutes, I have determined that neither permits the arrangement proposed in your letter. R.C. 3709.08 reads in pertinent part:

A city constituting a city health district may enter into a contract for public health service with the chief executive of another city constituting a city health district with the approval of a majority of the members of the legislative authority of such city or with the chairman of the district advisory council of the general health district with the approval of a majority of the members of the district advisory council. 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 of such city. (Emphasis added.)

Thus, once the cities mentioned in your request have withdrawn from their respective general health districts and reestablished their own city health districts, they may utilize the provisions of R.C. 3709.08 in order to contract for public health service. The question arises whether, under R.C. 3709.08, those cities, which are outside a county served by the Montgomery County Combined General Health District, may contract with the Montgomery County Combined General Health District.

I believe it is significant that R.C. 3709.08 empowers a city constituting a city health district to contract with the district advisory council of "the general

health district" (emphasis added) rather than with the district advisory council of a general health district. Statutory language must be "construed according to the rules of grammar and common usage." R.C. 1.42. The word "the" is classified as a definite article by Webster's New World Dictionary, which reads: "I. the (as opposed to a, an) is used to refer to a particular person, thing, or group, as: 1. that (one) being spoken of or already mentioned. . . ." Webster's New World Dictionary 1473 (2d college ed. 1978). "A" is classified as an indefinite article, and is defined as: "1. one; one sort of. . . 2. each; any one. . . A connotes a thing not previously noted or recognized, in contrast with the, which connotes a thing previously noted or recognized." Id. at 1. By using the word "the," the General Assembly has expressed an intention that a city is empowered to contract with a particular general health district, as opposed to any general health district. Cf. R.C. 3709.081 ("[a] general health district [seeking the provision of health services] may enter into a contract for public health services with the chief executive of a city constituting a city health district. . . or with the chairman of the district advisory council of another general health district. . ."). Reasonably, the only particular general health district to which the language of R.C. 3709.08 could refer is the general health district of the county in which the city is located. As noted above, "the" may refer to one being spoken of or already mentioned. R.C. 3709.07 and R.C. 3709.071, the sections immediately preceding R.C. 3709.08, deal with the union of a city health district and a general health district. Pursuant to R.C. 3709.01, there may be "a union of a general health district and one or more city health districts located with or partially within such general health district." As pointed out in 1961 Op. Att'y Gen. No. 2144, p. 195, a city health district and a general health district are two separate entities comprising separate geographical areas, and thus a city health district may never be literally within a general health district. Rather, R.C. 3709.01 and thus R.C. 3709.07 and R.C. 3709.071, refer to the union of a general health district and a city health district which is located, totally or partially, within a county served by the general health district. As a result, the reference in R.C. 3709.08 to "the general health district" appears to relate back to the last type of general health district mentioned—that general health district in which the city health district is located, or more precisely, the general health district of the county in which the city is located. I conclude that R.C. 3709.08 empowers a city constituting a city health district to contract only with the general health district of the county in which the city is located. As a consequence, I find that R.C. 3709.08 does not empower a general health district to contract with a city health district in order to provide services to the city health district when the city health district is not within a county served by the general health district.

I turn now to R.C. 3709.281, which provides in pertinent part:

A board of health of a city or general health district may enter into an agreement with the legislative authority of a municipality in which such health district is totally or partially located, and such legislative authority may enter into an agreement with such board of health, whereby such board of health undertakes, and is authorized by such legislative authority to exercise any power, perform any function, or render any service, in behalf of such legislative authority which such legislative authority may exercise, perform, or render.

Again, this language is imprecisely worded. I interpret R.C. 3709.281, however, as empowering a general health district to enter into an agreement with a municipality when that municipality is a village within the general health district, see R.C. 3709.01, or is a city which has been made a part of the general health district pursuant to R.C. 3709.01 and R.C. 3709.07 or R.C. 3709.071. Arguably, R.C. 3709.281 could be read to permit a general health district to enter into an agreement with a municipality if the municipality is within a county served by the general health district, even though the municipality constitutes a city health district. Only under the first interpretation of R.C. 3709.281, however, can it be

said that the general health district is located within the municipality. In any event, R.C. 3709.281 may not be read as empowering a general health district to enter into an agreement with a municipality when the municipality is not located within a county served by the general health district, which is the situation you present. Thus, I conclude that the Montgomery County Combined General Health District is not empowered by R.C. 3709.281 to enter into an agreement with a municipality as provided in that section when the municipality is not located within a county served by the District.

I draw your attention to R.C. 3709.282, which empowers "[t]he board of health of any city or general health district [to] 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 enacted prior to or after November 6, 1969, by the congress of the United States." I note that, in addition, R.C. 3709.085 empowers a city health district or general health district to contract with any political subdivision or governmental agency to obtain or provide services to control air pollution. Pursuant to these provisions, the Montgomery County Combined General Health District may give assistance to and otherwise cooperate with any city or city health district in order to establish and operate federal programs, and may contract with a city or city health district to provide services for air pollution control.

I find it significant that the General Assembly has set forth the circumstances under which a general health district may contract with a city or city health district for the provision of services. By specifying in R.C. 3709.08 and R.C. 3709.281 that a general health district may provide services to those city health districts and cities which are within a county served by the general health district and the limitations under which such contracts may be entered, and by providing in R.C. 3709.282 and R.C. 3709.085 that a general health district may contract with regard to the operation of federal programs and air pollution control services, respectively, the General Assembly has evidenced an intent that, pursuant to the doctrine of expressio unius est exclusio alterius, under no other circumstances may a general health district contract to provide services to cities and city health districts. See State ex rel. Boda v. Brown, 157 Ohio St. 368, 105 N.E.2d 643 (1952). Specifically, it may be inferred that a general health district, as a creature of statute, may not provide services to cities and city health districts which are located outside any county served by the general health district, unless such services are rendered in furtherance of the establishment and operation of a federal program or to control air pollution.

In conclusion, it is my opinion, and you are advised, that the board of health of a general health district may not contract with a city or city health district in order to provide the city or city health district public health services when such city or city health district is not located totally or partially within a county served by the general health district, unless such services are provided in accordance with the establishment and operation of a federal program or are provided to control air pollution.