1490.

CITY HEALTH DISTRICT—MUNICIPAL ORDINANCE NOT APPLICABLE TO SUCH DISTRICT'S EMPLOYES.

SYLLABUS:

An ordinance passed by a municipality to the effect that any appointee receiving pay from the city must be a bona fide resident of the city, has no application to appointees of city health districts.

COLUMBUS, OHIO, February 4, 1930.

HON. CHARLES A. NEAL, Director of Health, Columbus, Ohio.

DEAR SIR:—Your recent communication reads:

> "In the city of Campbell, Ohio, the city council at a meeting held January 7, 1930, passed an ordinance providing that any appointee receiving pay from the city must be a bona fide resident of the town. My opinion has been asked as to the authority of the city council to apply the provisions of such an ordinance to the employes of the city board of health appointed under the provisions of Section 4408 and Section 4411 of the Ohio General Code.
>
> I shall be glad to have your opinion on this matter as it affects the employment of a health commissioner who has continuously held that office for a period of eight years."

In connection with your inquiry it will be noted that prior to the enactment of the so-called Hughes and Griswold acts in 1919 and 1920, Sections 4404 et seq., of the General Code, provided for a city board of health. However, the acts hereinbefore referred to created a new scheme of administering health matters throughout the state and created health districts.

Section 1261-16, General Code, provides that each city shall constitute "a city health district." The said section further provides that townships and villages in each county shall be known as a "general health district". In Section 1261-30, it is provided that the district board of health created in said act shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, etc. It will further be observed that Section 4408, to which you refer, which originally had reference to municipal boards of health, was amended so as to refer to "any city health district". Under Section 1261-39, a provision is made whereby the state contributes to the support of any general or city health district.

From the foregoing it must be concluded that a city district health board is not a municipal board in a technical sense. In other words, health districts under existing law are created by the state under its police power and when districts are created under the provisions of Section 1261-16 and its related sections, the employes thereof may not be regarded as municipal employes. Furthermore, it must be concluded that an employe of such a district can not be said to be receiving pay from the city.

In other words, a city health district is a separate entity from the municipal government, although of course it embraces the same territory.

In an opinion of the Attorney General found in Opinions of the Attorney General for the year 1920, page 130, consideration was given to the status of such board. The following is quoted from said opinion:

"The Hughes Act was intended as a comprehensive health code, introducing some new features in health administration and making radical changes in the former laws; the state no longer dealt with municipalities, as such, directly, but created municipal health districts whose boundary lines were the same as the municipalities. This is evidenced by the first sentence of Section 1261-16, which shows the division of the state and the purposes for the division, in this language:

'For the purpose of local health administration, the state shall be divided into health districts.'

* * * * The question then is, was it the intention to abolish the municipal boards of health? Technically it would seem that such was the intention. The new board is not a municipal board, but a municipal district board. There can now be no such body known as the municipal board of health. * * * "

The conclusion of the Attorney General was reached after a consideration of the statutes hereinbefore mentioned and Section 3 of Article XVIII of the Ohio Constitution.

Without further discussion and in specific answer to your inquiry, it is my opinion that an ordinance passed by a municipality to the effect that any appointee receiving pay from the city must be a bona fide resident of the city, has no application to appointees of city health districts.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1491.

TAXES—MOTOR VEHICLE LICENSE AND GASOLINE—MUNICIPALITY'S PROCEEDS APPLICABLE FOR SALARIES AND EXPENSES OF ENGINEERS SUPERVISING STREET CONSTRUCTION.

SYLLABUS:

The salary and expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications, and supervising the construction of street paving generally, may properly be paid from the proceeds of the motor vehicle and gasoline taxes.

COLUMBUS, OHIO, February 5, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads as follows:

"May the salaries and the expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications and supervising the construction of street paving, be paid from the city's portion of the gasoline tax and motor vehicle license tax receipts, the total amount being less than the amount of such funds which may be expended for street construction and repaving?"

In view of the provisions of Section 5 Article XII of the Ohio Constitution,