

May 13, 2015

The Honorable Gary L. Lammers
Putnam County Prosecuting Attorney
336 E. Main St., Suite B
Ottawa, Ohio 45875

SYLLABUS:

2015-017

A board of county commissioners may not charge a board of health of a general health district for expenses incurred by county offices in providing services to the district, unless a statute expressly, or by necessary implication, authorizes such a charge. (2010 Op. Att’y Gen. No. 2010-001 (syllabus, paragraph 2), overruled, in part, due to statutory change.)



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OPINION NO. 2015-017

The Honorable Gary L. Lammers
Putnam County Prosecuting Attorney
336 E. Main St., Suite B
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Dear Prosecutor Lammers:

You have requested an opinion whether a board of county commissioners may charge a board of health of a general health district for expenses incurred by county offices in providing services to the district.

Putnam County Health Department and Putnam County Homecare and Hospice

The territory of the state is apportioned among health districts, with each city becoming a city health district and the townships and villages in each county forming a general health district. R.C. 3709.01. The Putnam County Health Department is a general health district comprising the townships and villages in Putnam County.¹ See 2007 Op. Att’y Gen. No. 2007-036, at 2-367; *Ohio’s Health Department Profile and Performance Database*, OHIO DEPARTMENT OF HEALTH, <https://odhgateway.odh.ohio.gov/LHDInformationSystem/Directory/GetLHDReport> (last visited May 12, 2015). A general health district is governed by a five-member board of health. R.C. 3709.02(A); 2007 Op. Att’y Gen. No. 2007-036, at 2-366. Among other duties provided in R.C. Chapters 3707 and 3709, a general health district’s board of health “may provide nursing care and other therapeutic and supportive care services to maintain an ill or infirm person in a place of residence used as such person’s home or elsewhere.” R.C. 3709.15. In Putnam County, such home health care services are provided by the Putnam County Homecare and Hospice. See 2004 Op. Att’y Gen. No. 2004-047, at 2-410; PUTNAM COUNTY HOMECARE & HOSPICE, <http://www.pchh.net/index.php/about-us> (last visited May 12, 2015).

“If a general health district will receive any part of its revenue for a fiscal year from an appropriation apportioned among the townships and municipal corporations composing the district,

¹ Insofar as the Putnam County Health Department is a general health district composed of townships and villages in Putnam County, this opinion addresses general health districts that are not combined with a city health district under R.C. 3709.07 or another general health district under R.C. 3709.10.

the board of health of the district shall adopt an itemized appropriation measure[.]” R.C. 3709.28(A).² The appropriation measure adopted under R.C. 3709.28, along with an itemization of the district’s expenses and anticipated revenues, shall be certified to the county auditor by the board of health. R.C. 3709.28(B). The county auditor shall then submit the appropriation measure and itemized expenses and revenues to the county budget commission. *Id.* Once set by the county budget commission, “[t]he aggregate appropriation ... shall be apportioned by the county auditor among the townships and municipal corporations composing the health district on the basis of taxable valuations in such townships and municipal corporations.” R.C. 3709.28(C).

If the taxes within the ten-mill limitation are insufficient to satisfy the cost of a general health district program, “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.” R.C. 3709.29. Once the insufficiency is certified, the board of county commissioners, acting as a special taxing authority for the general health district, “shall ... declare by resolution that the amount of taxes ... within the ten-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such district ..., and that it is necessary to levy a tax in excess of such limitation[.]” *Id.* R.C. 3709.29 has been interpreted as imposing a mandatory duty on a board of county commissioners to pass a resolution stating the necessity of a levy in excess of the ten-mill limitation when the board of health certifies that the amount of taxes within the ten-mill limitation will be insufficient. 2001 Op. Att’y Gen. No. 2001-013, at 2-74. In addition to tax revenues, a general health district also receives revenues from fees it may charge and state subsidies. R.C. 3709.28(B); R.C. 3709.32.

Appropriated moneys and other revenues of the district are placed in the district health fund. R.C. 3709.28(C). The county treasurer serves as the custodian of the district health fund, and the county auditor is the auditor of the district. R.C. 3709.31.

To support home health care services provided by a board of health of a general health district, the board is required to charge and collect a fee that is not greater than “the cost of service for such care from patients financially able to pay, or may accept payment for such services from persons or public or private agencies on behalf of the recipient[.]” R.C. 3709.15. Those fees are deposited in a home health services fund “and shall be used by the board only for defraying the cost of personnel, equipment, supplies, rental of physical facilities including real property, utilities, and administrative costs in providing services under [R.C. 3709.15].” R.C. 3709.15.

A county has certain responsibilities with respect to a general health district. *See, e.g.*, R.C. 3709.29 (board of county commissioners acts as a special taxing authority for a general health district); R.C. 3709.31 (county treasurer and county auditor shall provide services to a general health

² R.C. 3709.28(A) authorizes “a general health district [that] will not receive any part of its revenue for a fiscal year from an appropriation apportioned among the townships and municipal corporations composing the district” to either seek an appropriation measure under R.C. 3709.28 or under R.C. 5705.38, R.C. 5705.39, and R.C. 5705.40.

district); R.C. 3709.33 (county prosecutor is legal advisor to board of health of a general health district); R.C. 3709.34 (“board of county commissioners ... may furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of such county”). Nevertheless, a general health district is a separate political subdivision of the state and is not a county office. 1997 Op. Att’y Gen. No. 97-029, at 2-173 to 2-174; *see also* 2001 Op. Att’y Gen. No. 2001-013, at 2-77 (“the [general] health district is not a county body”).

Board of County Commissioners’ Authority to Seek Payment from a General Health District

The question whether a board of county commissioners may recoup expenses incurred by county offices in providing services to another public office has been addressed in several Attorney General opinions. *See, e.g.*, 2010 Op. Att’y Gen. No. 2010-005, at 2-32; 2010 Op. Att’y Gen. No. 2010-001, at 2-4;³ 2001 Op. Att’y Gen. No. 2001-024, at 2-134; 1982 Op. Att’y Gen. No. 82-011, at 2-35. Generally, a board of county commissioners may not charge a public office for services provided to that office by other county offices unless a statute expressly, or by necessary implication, authorizes the charge. 2001 Op. Att’y Gen. No. 2001-024 (syllabus) (“[a] board of county commissioners may not charge a public body administrative fees for costs incurred by the county auditor or treasurer, or for utility or rent expenses, unless there is express statutory authorization for the charge or authority implied from an express power”); *see also* 2010 Op. Att’y Gen. No. 2010-005 (syllabus) (“[a] county has no authority to recoup from taxing authorities within the county any portion of the cost of printing or mailing tax bills”); 1982 Op. Att’y Gen. No. 82-011 (syllabus, paragraph 1) (“[i]f a service is performed for a public office by an office of county government ... a board of county commissioners may not charge the office receiving such service unless there is express statutory authorization for such charge or authority implied from an express power”).

³ Syllabus paragraph 2 of 2010 Op. Att’y Gen. No. 2010-001 states: “[a] board of county commissioners has no statutory authority to charge a county law library resources board for space or utilities, or a fee for indirect costs, overhead, or centralized or support services.” R.C. 305.23(B), which had not been enacted at the time of the issuance of 2010 Op. Att’y Gen. No. 2010-001, now authorizes a board of county commissioners to “adopt a resolution establishing centralized purchasing, printing, transportation, vehicle maintenance, human resources, revenue collection, and mail operation services for a county office” and to charge a fee for those services. *See* Am. Sub. H.B. 153, 129th Gen. A. (2011) (eff. Sept. 29, 2011). As a county agency that may receive funding from the board of county commissioners, a county law library resources board (LLRB) may be charged a fee by a board of county commissioners for centralized services provided to an LLRB under R.C. 305.23. *See generally* R.C. 305.23(A)(1) (defining “county office” for the purpose of R.C. 305.23); R.C. 307.51; R.C. 307.513; 2011 Op. Att’y Gen. No. 2011-036, at 2-288 and 2-292 (LLRB is a county agency). Therefore, 2010 Op. Att’y Gen. No. 2010-001 (syllabus, paragraph 2) is overruled, in part, due to statutory change.

In 2001 Op. Att’y Gen. No. 2001-024, at 2-134, the Attorney General was asked whether the Jackson County Board of Commissioners could require public agencies to pay administrative fees relating to rent, utilities, or services performed by the county treasurer and county auditor. The administrative fee at issue in that opinion was set “by referencing a cost analysis that allocate[d] various charges to the different agencies.” *Id.* In reaching the conclusion that an administrative fee may not be charged unless a statute expressly, or by necessary implication, authorized charging the fee, the opinion began by noting the well-established principle that a board of county commissioners is a creature of statute and may exercise only those powers expressly granted by statute or necessarily implied therein. *Id.* Additionally, in financial matters, a board of county commissioners’ authority “must be clear and distinctly granted.” *Id.* (quoting *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916)). The opinion then noted “[i]t has long been established under Ohio law that a board of county commissioners has no general authority to charge public bodies for services provided by the county.” 2001 Op. Att’y Gen. No. 2001-024, at 2-135. Rather, the General Assembly has authorized a board of county commissioners to charge another public entity a fee for services provided by a county office in limited circumstances. *Id.* Further, the duties and responsibilities of a county treasurer and county auditor are funded by the county. *Id.* In this regard, the opinion states:

[w]hen services of the county auditor and treasurer are provided pursuant to statute to public bodies outside the county’s general budget, those services are provided as part of the general powers and duties of the auditor and treasurer. The cost of those services cannot be charged to the public bodies that receive them unless there is statutory authority to impose such a charge.

Id.

We reach the same conclusion with respect to your inquiry. A board of county commissioners may not charge a board of health of a general health district for expenses incurred by county offices in providing services to the district, unless a statute expressly, or by necessary implication, authorizes such a charge. There are several instances in which the General Assembly has authorized charging a board of health of a general health district a fee for services performed by a county office, agency, or board. *See, e.g.*, R.C. 307.15, R.C. 307.16 (a board of county commissioners acting on behalf of a health district pursuant to an agreement may receive payment from the health district); R.C. 307.806 (a county microfilming board and a health district may enter into a contract for microfilming services to be performed by the microfilming board at a set charge); R.C. 307.846 (a general health district may be charged for automatic or electronic data processing services performed by a county automatic data processing board pursuant to contract); R.C. 3707.55(C) (“board of county commissioners may issue securities ... for the acquisition of real property by a general health district ..., but only if the county has a contract with the general health district whereby the health district agrees to pay the county an amount equal to the debt charges on the issued securities on or before the date those charges fall due”); R.C. 3709.15 (a board of health of a general health district that contracts with a public agency for the public agency to provide home health care services under R.C. 3709.15 may agree to pay compensation to that public agency).

In addition, the General Assembly has required a county treasurer and a county auditor to provide services to a board of health of a general health district and has not provided for payment for those services by the district. R.C. 3709.31; *cf.* R.C. 305.23(B)(4) (board of county commissioners may adopt a resolution requiring county offices⁴ to use centralized services, including revenue collection, and to pay a set charge for those services); R.C. 319.54 (fees a county auditor may charge); R.C. 321.26-.27 (a county treasurer's fees). Therefore, in order for a board of county commissioners to lawfully charge a board of health of a general health district for the cost of services provided by a county office, the board must have express, or necessarily implied, authority to charge the board of health for the cost of those services.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a board of county commissioners may not charge a board of health of a general health district for expenses incurred by county offices in providing services to the district, unless a statute expressly, or by necessary implication, authorizes such a charge. (2010 Op. Att'y Gen. No. 2010-001 (syllabus, paragraph 2), overruled, in part, due to statutory change.)

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

⁴ “County office” is defined for the purpose of R.C. 305.23 as:

the offices of the county commissioner, county auditor, county treasurer, county engineer, county recorder, county prosecuting attorney, county sheriff, county coroner, county park district, veterans service commission, clerk of the juvenile court, clerks of court for all divisions of the courts of common pleas, including the clerk of the court of common pleas, clerk of a county-operated municipal court, and clerk of a county court, and any agency, department, or division under the authority of, or receiving funding in whole or in part from, any of those county offices.

R.C. 305.23(A)(1). A general health district does not constitute a county office as that term is defined for the purpose of R.C. 305.23. *See* 2001 Op. Att'y Gen. No. 2001-013, at 2-77 (“the [general] health district is not a county body and is not under the operational or fiscal control of the board of county commissioners” (footnote omitted)).