

OPINION NO. 2007-045**Syllabus:**

A board of county commissioners has a duty to provide janitorial services to the board of health of the general health district that occupies a county-owned building.

To: Gary L. Lammers, Putnam County Prosecuting Attorney, Ottawa, Ohio
By: Marc Dann, Attorney General, December 20, 2007

You have submitted an opinion request in which you ask whether a board of county commissioners has a duty under R.C. 3709.34 or any other statute to provide janitorial services to a county board of health. You have informed us that your question concerns a board of health of a general health district that currently occupies the entirety of a county-owned building. For the reasons that follow, we conclude that the Putnam County Commissioners have a duty to provide janitorial services to the Putnam County Board of Health.

Board of County Commissioners' Duties under R.C. 3709.34

Because a board of county commissioners is a creature of statute, let us begin by examining the statutory duties imposed upon such boards with respect to boards of health. *See generally Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993) (“[c]ounties ... may exercise only those powers affirmatively granted by the General Assembly”).

You specifically mention R.C. 3709.34, which states, “[t]he board of county

commissioners or the legislative authority of any city may furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of such county or city.”¹ This statute has long been interpreted, with one exception, as imposing upon a board of county commissioners a mandatory duty to provide suitable quarters for a general health district of which the county is part. *See, e.g.*, 1985 Op. Att’y Gen. No. 85-003 (syllabus, paragraph 1) (“R.C. 3709.34 imposes upon a board of county commissioners a mandatory duty to furnish suitable quarters to a board of health of a general health district having jurisdiction over such county”). As explained in 1997 Op. Att’y Gen. No. 97-029 at 2-175:

R.C. 3709.34 states that the board of county commissioners or the legislative authority of any city “may furnish suitable quarters” for a board of health with jurisdiction over all or a major part of the county or city. This provision has been construed to require that a county provide a general health district with office space and utilities, when the general health district consists only of territory in townships and villages within the county. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-016. If, however, the health district is a combined general health district that includes territory of a city, then either the city or the county may furnish office space and utilities, but neither is required to do so. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-016, at 2-63 n.1; 1991 Op. Att’y Gen. No. 91-016. A county may, thus, have certain responsibilities for providing a health district with facilities. In general, however, the health district is funded as an independent entity and is responsible for its own operations.

You have informed us that your health district includes only villages and townships within the county. It is not, therefore, a combined general health district for which the provision of suitable quarters is within the discretion of the participating cities or county. *See, e.g.*, 1991 Op. Att’y Gen. No. 91-016 (syllabus, paragraph 2) (stating, in part, “[p]ursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a city may, but is not required to, furnish office space for a combined general health district created under R.C. 3709.07”). Rather, R.C. 3709.34 imposes upon the board of county commissioners in such a general health district a mandatory duty to provide suitable quarters for the health district. *See* 1985 Op. Att’y Gen. No. 85-003 (syllabus, paragraph 1). *See generally* 2004 Op. Att’y Gen. No. 2004-047 (discussing Putnam County General Health District).

Duty to Provide Suitable Quarters under R.C. 3709.34

Having determined that R.C. 3709.34 imposes upon a board of county commissioners a duty to provide suitable quarters to a general health district of which the county is part, we turn to your specific question—whether a board of county commissioners has a duty to provide janitorial services for the board of health of a general health district of which the county is part.

¹ *See generally* 1995 Op. Att’y Gen. No. 95-030 (discussing establishment and operation of general health districts and the operation of each district by a board of health).

In analyzing whether a board of county commissioners was obligated to comply with a request by a board of health for additional space, 1985 Op. Att’y Gen. No. 85-003 at 2-8 and 2-9, explained, as follows:

Past construction of R.C. 3709.34 has been limited to attempts to define what constitutes suitable quarters. For example, 1949 Op. No. 1085 concluded that office space without running water, toilet facilities, heat and light did not constitute suitable quarters as mandated by G.C. 1261-36 [R.C. 3709.34]. In Op. No. 80-086, my immediate predecessor concluded that the obligation to provide suitable quarters included the responsibility to pay for utilities used by the general health district. Additionally, 1974 Op. Att’y Gen. No. 74-032 noted that R.C. 307.01 (requiring boards of county commissioners to provide offices, equipment, and other facilities for county officers) applies to a general health district and requires the board of county commissioners to provide such facilities as would be conducive to the expeditious and economical administration of all county offices. *At a minimum, suitable quarters would encompass that which is necessary to enable the board of health to fulfill the mandatory duties of a general health district. See 1932 Op. No. 3989. (Emphasis added.)*

Thus, 1985 Op. Att’y Gen. No. 85-003 found the county commissioners’ duties under R.C. 3709.34 to provide “suitable quarters” for the board of health to encompass all things necessary for the board to perform its mandatory duties. The opinion also concluded that it is within the discretion of the county commissioners to determine whether a particular item is necessary. 1985 Op. Att’y Gen. No. 85-003 (syllabus, paragraph 2). *See, e.g., 1996 Op. Att’y Gen. No. 96-016 (syllabus, paragraph 1) (stating, in part, “[p]ursuant to R.C. 3709.34, a board of county commissioners is required to provide and pay for those utilities necessary for the general health district of the county to discharge its statutory duties”).*²

County Commissioners’ Duties With Respect to County-Owned Buildings

In the situation you describe, the board of health of the general health district occupies office space in a county-owned building. Thus, we must also consider the scope of the county commissioners’ duties with respect to such a building.

The duties of a board of county commissioners with respect to county-owned buildings, specifically the county court house, were summarized in 1989 Op. Att’y Gen. No. 89-029 at 2-122, as follows:

The board of county commissioners, as a general rule, is charged with the management and control of county property. 1987 Op. Att’y Gen. No. 87-039. *See Dall v. Cuyahoga County Building Commission*, 14 Ohio N.P. (n.s.) 209, 211 (C.P. Cuyahoga County 1913) (the board of

² As further noted in 1985 Op. Att’y Gen. No. 85-003, the county commissioners’ decisions under R.C. 3709.34 concerning the suitability of quarters for the board of health are subject to judicial review for abuse of discretion.

county commissioners “is representative and guardian of the county, having the management and control of its property”). Custody and control of county property carries the duty of care and maintenance. *Dittrick v. Barr*, 22 Ohio L. Rep. 289, 289-290 (Ct. App. Cuyahoga County 1924) (“[t]hat the board of county commissioners, under the law have control and custody of the court house itself as well as other public buildings of the county, there can be no question, because by virtue of their office the care and maintenance of public property within its jurisdiction is lodged in that body”). The duty of the commissioners to manage and control county property includes the duty to provide cleaning and janitorial services. 1917 Op. Att’y Gen. No. 80, p. 187 (“[t]he county commissioners are the legal custodians of the court house and it is their duty to see that the entire building ... is kept clean”). The board of county commissioners is expressly authorized to hire such necessary maintenance, cleaning and janitorial personnel as are required for any county building. Such authority is vested in the commissioners by R.C. 305.16, which states that “[t]he board of county commissioners may employ a superintendent, and such watchmen, janitors, and other employees as are necessary for the care and custody of the court house, jail, and other county buildings, bridges, and other property under its jurisdiction and control.” See 1933 Op. Att’y Gen. No. 801, p. 679, 680 (“the county commissioners may appoint janitors for the court house”).

Thus, 1989 Op. Att’y Gen. No. 89-029 concluded that the provision of janitorial services in the county’s court house is part of the county’s obligation to manage and control county buildings, as evidenced by the authority vested in the commissioners by R.C. 305.16 to employ, among others, “janitors, and other employees as are necessary for the care and custody of the court house, jail, and other county buildings, bridges, and other property under its jurisdiction and control.”

We also note, however, that in fulfilling its duty to manage and control county property, a board of county commissioners possesses authority to exercise a reasonable discretion in determining the amount and nature of janitorial services that are necessary. See *Fromm v. State*, 36 Ohio App. 346, 349, 173 N.E. 201 (Cuyahoga County 1930) (“[t]he statutes of Ohio make it the duty of the county commissioners to have charge and supervision of all the public buildings belonging to the county, in such county, and to erect, furnish, and maintain those buildings”); 1997 Op. Att’y Gen. No. 97-001 at 2-6 n.10 (“[i]n the exercise of its duty to manage and control county property, ... the board of county commissioners has broad discretion as to the manner in which it carries out such responsibilities”).

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that a board of county commissioners has a duty to provide janitorial services to the board of health of the general health district that occupies a county-owned building.