

Note from the Attorney General's Office:

1955 Op. Att'y Gen. No. 55-5699 syllabus paragraph 1
was overruled on the basis of legislative amendment
by 2017 Op. Att'y Gen. No. 2017-041.

5699

1. HEALTH DISTRICT, CITY—UNION WITH GENERAL HEALTH DISTRICT—EMPLOYEES OF RESULTING COMBINED GENERAL HEALTH DISTRICT—NOT IN CLASSIFIED CIVIL SERVICE—STATUS, FORMER EMPLOYEES—SECTION 3709.07 RC.
2. NO OBLIGATION ON BOARD OF COMBINED GENERAL HEALTH DISTRICT TO RE-EMPLOY ANY OF FORMER EMPLOYEES.
3. UNION OF CITY HEALTH DISTRICT WITH GENERAL HEALTH DISTRICT—DOES NOT DESTROY LEGAL EXISTENCE OF “DISTRICT ADVISORY COUNCIL”—COUNCIL WITHOUT POWER TO EXERCISE ANY OF ITS FUNCTIONS DURING EFFECTIVE PERIOD OF CONTRACT OF UNION—TERMINABLE PERIOD—COUNCIL MAY, AFTER SUCH PERIOD, EXTEND OR RENEGOTIATE CONTRACT—MAY ELECT TO DESIGNATE BOARD OF HEALTH TO OPERATE SEPARATE GENERAL HEALTH DISTRICT—SECTIONS 3709.03, 3709.07 RC.

SYLLABUS:

1. Where the union of a city health district with a general health district has been accomplished as provided in Section 3709.07, Revised Code, the employees of the resulting combined general health district are not in the classified civil service; and any persons formerly in the classified civil service of the city health district, if employed by such combined district, lose their status under the civil service laws.
2. There is no obligation on the board of a combined general health district to re-employ any of the former employees of the constituent health districts which have united to form such combined district.
3. The union of a city health district with a general health district under the provisions of Section 3709.07, Revised Code, does not have the effect of destroying the legal existence of the “district advisory council” which is created by the provisions of Section 3709.03, Revised Code. Such council is without power to exercise any of its functions during the effective period of such contract of union; but where such contract is for a terminable period the council may, after such period, either extend or renegotiate such contract, or may elect again to designate a board of health to operate a separate general health district.

(Columbus, Ohio, September 1, 1955

Hon. Anthony J. Bowers, Prosecuting Attorney
Allen County, Lima, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"The Board of Health of the City of Lima and General Health District, which constitutes Allen County excluding the City of Lima, have entered into a contract for unification into a General Health District for a single district. Under the provisions of the Revised Code, No. 3709.07, the contract provides that the administration of the combined district shall be taken over by the Board of Health of the City of Lima.

"The employees of the City Health Department, including the health commission, are under Civil Service. The County employees, under the General Health District, are not Civil Service employees. Thus we would like to have your opinion on the following questions:

"(1) What is the Civil Service status of the city employees upon unification of the City and General Health District?

"(2) What is the status of the employees of the present health District under the unification of the City Board of Health with the General Health District and as to whether they may become Civil Service employees?

"(3) Under the unification, assuming that the contract does not make any mention of the re-employment of the present employees, would the City Board of Health have the right not to employ employees of the city or the general health district?

"(4) In the event that there is a duplication of employees from each department for a particular job, does the City Board of health have the right to retain whichever employee they prefer?

"(5) Under the unification, does the General Health District have the right to institute Civil Service status for all of its employees?

"(6) What is the status of the district advisory council of the General Health District where, under the unification the administration is taken over by the Board of Health of the City of Lima, as to whether they remain in existence and continue to meet annually as provided under the Revised Code 3709.03?"

Section 3709.01, Revised Code, provides that the state shall be divided into health districts. Each city constitutes a city health district while all townships and villages within each county are combined to form a general health district.

This section also authorizes the union of a city health district with a general health district, while Section 3709.07, Revised Code, provides for the manner in which such union may be effected. This latter section provides in pertinent part as follows :

“When it is proposed that a city health district unite with a general health district in the formation of a single district, the district advisory council of the general health district shall meet and vote on the question of union. It shall require a majority vote of the total number of townships and villages entitled to representation voting affirmatively to carry the question. The legislative authority of the city shall likewise vote on the question. A majority voting affirmatively shall be required for approval. When the majority of the district advisory council and the legislative authority have voted affirmatively, the chairman of the council and the chief executive of the city shall enter into a contract for the administration of health affairs in the combined district. Such contract shall state the proportion of the expenses of the board of health or health department of the combined district to be paid by the city and by that part of the district lying outside of the city. The contract may provide that the administration of the combined district shall be taken over by either the board of health or health department of the city or by the board of health of the general health district. Such contract shall prescribe the date on which such change of administration shall be made. A copy of such contract shall be filed with the director of health.

“The combined district shall constitute a general health district, and the board of health or health department of the city or the board of health of the original general health district, as may be agreed in the contract, shall have, within the combined district, all the powers granted to, and perform all the duties required of, the board of health of a general health district.”

It is therefore apparent that whether the administration of the combined district is to be taken over by the city board of health or the general district board of health, such board assumes all of the duties of, and acquires all of the powers granted to, the board of health of a general health district.

All of the questions which you have presented, with the exception of question (6), involve a determination of the employment status of those

persons employed by a city and a general health district respectively, and the effect of a union of these districts upon this employment status. Because of the distinction which places the employes of a city health district within the civil service of the city with which the district is coterminous, and excludes employes of a general health district from the civil service, I deem it advisable to review briefly the history of the law respecting these questions.

The act providing for the establishment of city and general health districts in their present form, commonly referred to as the Hughes Act, was enacted by the eighty-third General Assembly, 108 Ohio Laws, Part I, p. 236. Former Sections 1261-22 and 4408, General Code, specifically accorded civil service status to employes of both city and general health districts.

The Hughes Act, however, was amended by the Griswold Act, 108 Ohio Laws, Part II, p. 1085, and all language in the above sections which pertained to civil service was removed. These sections have remained substantially the same as when so amended, and are now found in Sections 3709.13 and 3709.14, Revised Code.

Section 3709.13, *supra*, provides as follows:

“In any general health district the board of health may, upon the recommendation of the health commissioner, appoint for full or part time service a public health nurse and a clerk and such additional public health nurses, physicians, and other persons as are necessary for the proper conduct of its work. Such number of public health nurses may be employed as is necessary to provide adequate public health nursing service to all parts of the district. The commissioner and other employees of the board may be removed for cause by a majority of the board.”

Section 3709.14, *supra*, provides as follows:

“In any city health district, the board of health or person performing the duties of a board of health shall appoint for full or part time service a health commissioner and may appoint such public health nurses, clerks, physicians, and other persons as are necessary.”

Despite the removal of the specific language in the Hughes and Griswold acts pertaining to civil service, the question remained whether employes of a city or general health district could be considered to be within the civil service by virtue of the more general provisions of the civil service laws.

Section 10, Article XV, of the Ohio Constitution, provides as follows :

“Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.”

Section 143.01, Revised Code, Sections 486-1 and 486-1(a), General Code, provides as follows :

“As used in sections 143.01 to 143.48, inclusive, of the Revised Code :

“(A) ‘Civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities, and city school districts thereof.” * * *

The above question was answered by one of my predecessors in Opinion No. 2256, Opinions of the Attorney General for 1930, page 1348. After first holding that the Hughes and Griswold Acts created health districts as separate political entities, the then Attorney General held that the civil service laws were not applicable to employees of such districts, stating at page 1349 of the opinion :

“By the terms of Sections 486-1 of the General Code, above quoted, the Legislature limited the application of the civil service laws to offices and positions of trust or employment in the service of the state, and the counties, cities and city school districts. It therefore follows that offices and positions which are not in the service of the state or one of the political subdivisions named in Section 486-1, General Code, are not included.”

See also, *State ex rel. Mowrer v. Underwood*, 137 Ohio St., 1.

Although, as heretofore stated, Sections 3709.13 and 3709.14, Revised Code, have not been amended in material part since the passage of the Griswold Act, Section 143.30, Revised Code, which section defines the jurisdiction of the municipal civil service commissions, was amended in 1941 to include within their jurisdiction employes of a city health district. No provision was made for placing employes of a general health district within the civil service.

It is therefore apparent that while employes of a city health district have again been afforded civil service status, there is no provision in law by which the employes of a general health district could be accorded such status.

As previously pointed out, an examination of those statutes which authorize the union of a city health district with a general health district discloses that such a combination results in the formation of a new general health district and a consequent dissolution of the former city and general health districts.

I must therefore conclude that employes of the combined district, as employes of a general health district, are not subject to, or entitled to the protection of, the civil service laws.

A somewhat analogous problem was presented for determination by one of my predecessors in Opinion No. 203, Opinions of the Attorney General for 1933, page 281. The municipality of Dennison had, by reason of a loss in population, reverted from a city to a village. One of the questions presented was, whether this fact affected the civil service status of those persons who were formerly within the classified civil service of the city.

After holding that the civil service laws were not applicable to the employes of a village, the then Attorney General concluded that the former employes of the city had lost their civil service status. It was stated at page 284, of the opinion :

“* * * There is no provision in the civil service law of this state which evinces an intention on the part of the legislature to perpetuate and retain the employment of persons in the classified service even when the political entity by whom they were employed no longer comes within the scope of the civil service law. * * *”

I am in complete agreement with the position thus taken by my predecessor.

Inasmuch as Section 3709.13, Revised Code, hereinabove set forth, authorizes the board of health of any general health district to employ all necessary personnel, it is my further opinion that the city board of health in this case could, in its discretion, employ whatever persons are deemed necessary for the proper conduct of the work within the combined district, without regard to civil service requirements.

A further question has been presented by your request, viz., what is the effect of the union of a city and a general health district upon the district advisory council of the former general health district, when the administration of the combined district is taken over by the board of health of the former city health district.

Section 3709.03, Revised Code, provides for the creation of a district advisory council for each general health district, to be composed of the chief executive of each municipal corporation and the chairman of the board of township trustees of each township within the health district. This section further provides that the council shall meet annually for the purpose of electing its officers, and appointing a member of the general district board of health in accordance with Section 3709.02; Revised Code. This section also provides that the council shall consider reports filed with it by this board, and make whatever recommendations it deems necessary.

It is obvious that where a combined general health district has been created as in the instant case there would be no occasion for a district advisory council to exercise certain of these functions. However, such council is clearly created by the terms of the statute itself and there is nothing in Section 3709.07, Revised Code, relative to the union of a general and a city health district, which purports to destroy the agency thus created. It would seem, therefore, that the functions of such council are temporarily suspended by the contract of union.

In this connection I am informed that it is common practice to include in the contract of union a provision limiting the duration of the contract to a definite period. I perceive nothing improper in such a provision and it would seem that in such a case the district council would be in a position, at the expiration of the term thus designated, to consider whether a new contract of union would be negotiated or whether operation as a separate general health district would be resumed.

Accordingly, in specific answer to your inquiry, it is my opinion :

1. Where the union of a city health district with a general health district has been accomplished as provided in Section 3709.07, Revised Code, the employes of the resulting combined general health district are not in the classified civil service; and any persons formerly in the classified civil service of the city health district, if employed by such combined district, lose their status under the civil service laws.

2. There is no obligation on the board of a combined general health district to re-employ any of the former employes of the constituent health districts which have united to form such combined district.

3. The union of a city health district with a general health district under the provisions of Section 3709.07, Revised Code, does not have the effect of destroying the legal existence of the "district advisory coun-

cil" which is created by the provisions of Section 3709.03, Revised Code. Such council is without power to exercise any of its functions during the effective period of such contract of union; but where such contract is for a terminable period the council may, after such period, either extend or renegotiate such contract, or may elect again to designate a board of health to operate a separate general health district.

Respectfully,

C. WILLIAM O'NEILL
Attorney General