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BOARD OF HEALTH OF GENERAL HEALTH DISTRICT MAY RENT AUTOMOBILES FOR USE OF EMPLOYEES—BOARD OF HEALTH MAY DISPOSE OF AUTOMOBILES WHAT IT OWNS WHEN SUCH AUTOMOBILES ARE NO LONGER NECESSARY. § §3709.03, 3709.31, R.C.

SYLLABUS:

1. A board of health of a general health district, appointed pursuant to Section 3709.03, Revised Code, may rent automobiles for the use of its employees when it has determined that such automobiles are necessary to the successful, economical and efficient conduct of its work.

2. A board of health of a general health district, may dispose of automobiles which it owns when it has determined that such automobiles are no longer necessary to the successful, economical and efficient conduct of its work; and any funds derived from such disposition should be placed in the health fund of the district, which fund is in the custody of the county treasurer under authority of Section 3709.31, Revised Code.

Columbus, Ohio, November 17, 1959

Hon. Edward R. Ostrander, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

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

“This office has recently been consulted by the General Health District for Lake County, Ohio, which is a general health district covering the entire County of Lake with the exception of the City of Painesville.

“This District has in the past purchased various automobiles for the use of their nurses, health commissioner, etc. The Board of Health has now determined that it would be more economical to enter into a rental agreement for these automobiles and have asked if they are authorized to do so under the existing law.

“After some research, I have been unable to find any law governing this particular point and therefore request an opinion of you concerning the following two questions:

- “1. May a general health district rent automobiles for the use of their employees?
- “2. If they are so authorized to rent automobiles, may they then dispose of all autos that they now own and use the pro-

ceeds thereof for defraying the expenses incurred in renting the vehicles or must the proceeds from the sale of such vehicles be placed into the general fund of the health district?"

Chapter 3709., Revised Code, deals with health districts. "General health district" is defined in Section 3709.01, Revised Code, which reads:

"The state shall be divided into health districts. Each city constitutes a health district and shall be known as a 'city health district.'

"The township and villages in each county shall be combined into a health district and shall be known as a 'general health district.'

"As provided for in sections 3709.07 and 3709.10 of the Revised Code, there may be a union of two or more contiguous general health districts, not to exceed five, or a union of a general health district and a city health district located within such general health district." (Emphasis added).

I find no law specifically authorizing a general health district to rent automobiles for the use of its employees. In Opinion No. 2995, Opinions of the Attorney General for 1925, page 761, however, it was held that a district board of health could purchase an automobile for the use of its employees, the syllabus reading:

"There is no express authority authorizing a district board of health to purchase an automobile for the use of its employees. However, where conditions are such that the successful, economical and efficient performance of the board's duties, which are expressly imposed by statute, requires such a purchase, the authority is reasonably implied. Whether or not such a condition exists is a question of fact to be determined in each case, in the discretion of the board."

In this opinion the statutes relating to health districts were reviewed and the powers and duties of health districts discussed. At page 763 and 764 it is stated:

"It will be observed upon consideration of the statutes hereinbefore set forth that the district board of health is charged with a great responsibility in the carrying out of the provisions of the health laws. It is apparent also that the health commissioner, physicians and nurses cannot perform efficient services without some practical means of transportation to and from places where their services are required. The statutes do not expressly make any provision for any kind of transportation. However, to take

the position that the work of the board of health could not be performed on account of no provision having been made relative to the transportation of employees of the board would be an absurdity in derogation of the decisions of the Ohio Courts relating to statutory construction. It cannot be denied that a board of this character has such incidental powers as are necessary to enable it to perform the duties expressly imposed. It should be further mentioned in this connection that the courts have frequently held that in view of the public interest confided in boards of health, laws relating to their powers should be liberally construed in favor of the board.

“From the sections heretofore quoted it will be clearly seen that it was contemplated by the legislature that there would be current expenses which the board would have, and for the payment of such provision has been made. The legislature has not attempted to define what would be proper expenses of this character. Therefore it will be seen that your question must be decided upon the facts. What is a proper expenditure in one case may be wholly improper in another. In a general health district in which the duties of the board of health and its employees are such as make it more economical to purchase an automobile than to rely upon other means of transportation, and the efficiency of the board, in view of conditions, requires such, it is believed that by implication sufficient authority may be found. On the other hand, if the work of the board is such that the purchase and maintenance of an automobile is not necessary to the successful, economical and efficient conduct of its work, such an expenditure would not be justified.

“It may be borne in mind that the object of the law is to provide for the public health and welfare, one of the most important functions of government. It is believed to be proper to consider the universal custom relative to the general use of automobiles as a means of transportation in existence at the time the present health legislation was enacted. I am compelled to the conclusion that it was the legislative intent that such incidental powers were to be exercised by boards of health as would enable them to accomplish their main purpose in a practical and businesslike manner.”

Opinion No. 2995, *supra*, was cited and followed in Opinion No. 498, Opinions of the Attorney General for 1929, page 752, the syllabus reading:

“A district board of health may purchase motor vehicles for the use of the district health commissioner of such district when conditions are such that the successful, economical and efficient performance of the board’s duties which are expressly imposed by statute may require such a purchase. Affirming Opinion No. 2995, Opinions of the Attorney General, 1925, p. 761.”

On reviewing the provisions of Chapter 3709., Revised Code, and particularly Sections 3709.11, 3709.13, 3709.16, 3709.21, and 3709.22 to 3709.27, inclusive, Revised Code, I find that a board of health of a general health district is charged with many duties in which the use of automobiles by its employees could be considered necessary to the successful, economical and efficient conduct of its work. In accord with the opinions cited above, therefore, I am of the opinion that the authority to provide such automobiles is reasonably implied.

From your letter it appears that the board of health here concerned has in the past purchased automobiles for the use of its employees. Thus, such board must have already determined that automobiles are necessary to the successful, economical and efficient conduct of its work. Such necessity being established, I am of the opinion that it is within the authority of such board of health to rent automobiles for the use of its employees.

Considering your second question, the expenses of the board of health of a general health district are paid in accordance with Section 3709.31, Revised Code, reading as follows:

“The treasurer of a city which constitutes a city health district shall be the custodian of the health fund of such city health district. The county treasurer of a county which constitutes all or the major portion of a general health district shall be the custodian of the health fund of the general health district.

“The county auditor of a county which constitutes all or a major portion of a general health district shall act as the auditor of the general health district. The auditor of a city which constitutes a city health district shall act as the auditor of a city health district.

“Expenses of the board of health of a general health district shall be paid on the warrant of the county auditor issued on vouchers approved by the board of health and signed by the health commissioner. Expenses of a board of health or health department of a city health district shall be paid on the warrant of the auditor of the city issued on vouchers approved by the board of health or health department of a city health district and signed by the health commissioner.” (Emphasis added).

You will note that expenses of the board of health of a general health district are paid on the warrant of the county auditor from the health district funds of which the county treasurer is the legal custodian. There is no authority for payment of expenses directly by the board of health with funds which may have come into its possession.

While there is no direct authority for the board of health to dispose of automobiles that it now owns, such disposition would appear to be reasonably implied where the board has determined that such automobiles are no longer essential to the successful, economical and efficient conduct of its work. Proceeds of the sale of any such automobiles being funds of the health district, such funds should be placed in the health fund of the general health district.

Accordingly, it is my opinion and you are advised :

1. A board of health of a general health district, appointed pursuant to Section 3709.03, Revised Code, may rent automobiles for the use of its employees when it has determined that such automobiles are necessary to the successful, economical and efficient conduct of its work.

2. A board of health of a general health district may dispose of automobiles which it owns when it has determined that such automobiles are no longer necessary to the successful, economical and efficient conduct of its work; and any funds derived from such disposition should be placed in the health fund of the district, which fund is in the custody of the county treasurer under authority of Section 3709.31, Revised Code.

Respectfully,

MARK McELROY

Attorney General