

2041

1. VACANCY—DISTRICT ADVISORY COUNCIL—MAY FILL VACANCY IN BOARD OF HEALTH OF GENERAL HEALTH DISTRICT ONLY AT ANNUAL MEETING.
2. MEETINGS OF DISTRICT ADVISORY COUNCIL—HELD SUBSEQUENT TO ANNUAL MEETING—SPECIAL MEETINGS RATHER THAN CONTINUATIONS OF ANNUAL MEETING.

SYLLABUS:

1. A district advisory council may fill a vacancy in the board of health of a general health district only at its annual meeting.
2. Meetings of the district advisory council which are held subsequent to the annual meeting of said council are special meetings rather than continuations of the annual meeting.

Columbus, Ohio, July 18, 1950

Hon. Reeder C. Hutchinson, Prosecuting Attorney
Defiance County, Defiance, Ohio

Dear Sir:

I am in receipt of your communication requesting my opinion, as follows:

“At its annual meeting on the first Monday of March the District Advisory Council of the Defiance County General Health District voted not to unite with the City of Defiance for a com-

bined health district. A subsequent meeting of the Advisory Council was called by the Board of Health on Tuesday, March 14 to reconsider the question. At that time a motion was made that the General Health District unite with the City of Defiance for the year commencing April 1, 1950. This motion was defeated in a vote taken at 1:00 a. m. At that time, as Prosecuting Attorney, I ruled that the Advisory Council would have to meet again in order to elect a Health Board for the General Health District and the date of April 4 was selected by the chairman.

"Subsequent to that meeting, as Prosecuting Attorney, I ruled that the present Health Board of the combined districts is the Health Board of the General Health District and that the members residing within the corporate limits of Defiance should resign and be replaced by an election held by the District Advisory Council. The Board of Health, however, relying on G. C. 1261-17 has announced that it will fill the vacancies caused by such resignations and contends that the failure of the District Advisory Council to fill the anticipated vacancies at their annual meeting, makes impossible the filling of these vacancies by any means other than selection by the Board of Health. I have been asked by the chairman of the District Advisory Council to obtain a ruling on this subject. I wish to call your attention to the following questions:

"1. Does the District Advisory Council have the power to fill a vacancy in the Board of Health of the General Health District at any time other than at its annual meeting?"

"2. Under the circumstances above related, will the meeting announced for April 4 be considered an extended session of the annual meeting of the District Advisory Council?"

Before proceeding to answer the specific questions advanced in your communication, attention is directed to Section 1261-20, General Code, which provides for the union of a city with a general health district. It should be noted that this section provides for certain contractual obligations in the event of such a union, and it therefore must be assumed for purposes of this opinion that there are no outstanding obligations between the parties involved in your communication who now are intent upon dissolving the union of the city and general health districts.

Your first question reads as follows:

"Does the District Advisory Council have the power to fill a vacancy in the Board of Health of the General Health District at any time other than at its annual meeting?"

Reference is therefore made to Section 1261-18, General Code,

which provides for an advisory council for general health districts, which is required to appoint the members of the boards of health, and also provides for the organization, duties, annual meetings and special meetings, on the request of the district board of health or the order of the state commissioner of health.

Thus informed that special meetings of the district advisory council may be held, it should be noted from Section 1261-18 that such special meetings are only expressly provided for upon the request of the district board of health or upon the order of the state commissioner of health. The significance of this provision was encountered in Opinions of the Attorney General for 1924, at page 53, where the first branch of the syllabus reads as follows:

“The district advisory council of a general health district may hold special meetings without the call of the state director of health or of the district board of health.”

In commenting upon this branch of the syllabus, my predecessor has this to say at page 56 of the opinion:

“The statute provides that the advisory council may make recommendations to the district board of health and to do so would require a meeting of the district advisory council. It might not be expedient to make such recommendation at the time of the annual meeting, and the district board of health or the state director of health might not call a special meeting, and to hold that the district advisory council might not hold special meetings except at the call of the district board of health or the state director of health would place them at the mercy of the above officials.

“In the case of State of Ohio ex rel Cline vs. Wilkesville, 20 O. S. 288, on page 293 of the opinion, the court say:

“That other or special meetings of the trustees are authorized, though not expressly required by law, is clear, from the fact that many duties are enjoined upon the trustees which cannot be properly discharged at the regular meetings.’”

However, the authority of the district advisory council to call special meetings does not imply an authorization to appoint members to the district board of health at any time other than at its annual meeting.

And the legislative intent with reference to any such authorization is clarified by reference to Section 1261-17, General Code, which reads in part as follows:

“* * * Provided, that when a vacancy shall occur more than ninety days prior to the annual meeting of the district advisory council the remaining members of the district board of health may select a resident of the district to fill such vacancy until such meeting: A majority of the members of the district board of health shall constitute a quorum.”

It may be noted from this section that the district board of health may make appointments where a vacancy exists more than ninety days before an annual meeting. However, this appointment is not necessarily permanent for the unexpired term, but only is effective until the next annual meeting at which time the district advisory council may make a permanent appointment for the duration of the unexpired term.

The authority of the district advisory council to make appointments to fill vacancies in such a manner is provided by Section 1261-17, General Code, as follows:

“* * * A vacancy in the membership of the board of health of a general health district shall be filled in like manner as an original appointment and shall be for the unexpired term. * * *”

I am accordingly of the opinion, in specific answer to your first question, that a district advisory council may fill a vacancy in the board of health of a general health district only at its annual meeting.

In the light of the opinion expressed upon your first question, an answer to the second question seems unnecessary, since provision is made for special meetings of the district advisory council. It would therefore seem unreasonable to look upon meetings subsequent to the annual meeting as continuations of said meeting. I am rather inclined, and therefore of the opinion, that meetings held subsequent to the annual meeting are special meetings.

Respectfully,

HERBERT S. DUFFY,
Attorney General.