

OPINION NO. 68-063**Syllabus:**

1. The aggregate appropriation of a general health district, as fixed by the county budget commission, shall be apportioned by the county auditor among the townships and municipalities composing the general health district on the basis of taxable valuations in such townships and municipal corporations, pursuant to Section 3709.28, Revised Code. Such taxable valuations are based upon the taxable real and public utility property listed on the general tax list and duplicate compiled and made up pursuant to Section 319.28, Revised Code, and the taxable personal property listed on the general tax list and duplicate compiled and made up pursuant to Section 319.29, Revised Code. Such taxable valuations are not based upon the taxable personal property listed on the classified tax list and duplicate compiled and made up pursuant to Section 319.34, Revised Code.

2. When a county budget commission has properly fixed the aggregate appropriation of a general health district pursuant to Section 3709.28, Revised Code, and a special health levy, authorized by Section 3709.29, Revised Code, has been approved by the voters, the county budget commission may not reduce the aggregate appropriation previously fixed by such commission.

To: William E. Kessler, Miami County Pros. Atty., Troy, Ohio
By: William B. Saxbe, Attorney General, April 2, 1968

Your letter requesting my opinion presents the following questions:

1. Is the apportionment of the aggregate appropriation for a general health district as provided by Section 3709.28, Revised Code, limited to real estate taxes or does it include personal property taxes?
2. If a special health levy for a general health district, authorized by Section 3702.29, Revised Code, is approved by the voters, may the county budget commission reduce the amount of township and village support previously assessed?

Your first question refers to Section 3709.28, Revised Code, which reads in part:

"The aggregate appropriation, as fixed by the commission, less the amounts available to the general health district from the several sources of revenue, including the estimated balance from the previous appropriation, shall be apportioned, by the auditor among the townships and municipal corporations composing the health district on the basis of taxable valuations in such townships and municipal corporations. * * *"
(Underlining added.)

What constitutes taxable valuations in such townships and municipal corporations is provided by Section 5705.49, Revised Code, which reads in part:

"Wherever in the Revised Code, the taxing authorities of any subdivision, as defined in section 5705.01 of the Revised Code, are authorized to levy taxes on the taxable property within such subdivision, such authority shall extend only to the levy of taxes on the taxable property listed on general tax lists and duplicates, and such taxing authorities shall not levy taxes on the classified tax list and duplicate provided for by section 319.34 of the Revised Code. * * *"

(Underlining added.)

What constitutes taxable property listed on general tax lists and duplicates includes the real and public utility property referred to in Section 319.28, Revised Code, and the personal property referred to in Section 319.29, Revised Code, but does not include taxable property listed on the classified tax list and duplicate provided for by Section 319.34, Revised Code.

Your second question refers to Section 3709.29, Revised Code, which reads in part:

"If the estimated amount of money necessary to meet the expenses of a general health district program will not be forthcoming to

the board of health of such district out of the district health fund because the taxes within the ten-mill limitation will be insufficient, 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. Such board of county commissioners is hereby ordained to be a special taxing authority for the purposes of this section only, and, notwithstanding any other law to the contrary, the board of county commissioners of any county in which a general health district is located is the taxing authority for such special levy outside the ten-mill limitation. The board of county commissioners shall thereupon, in the year preceding that in which such health program will be effective, by vote of two thirds of all the members of said body, declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such district within the county, and that it is necessary to levy a tax in excess of such limitation in order to provide the board of health with sufficient funds to carry out such health program. Such resolution shall be filed with the board of elections not later than four p.m. of the ninetieth day before the day of election."

Section 5705.31, Revised Code, reads in part:

"The County budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve the following levies without modification:

"* * * * *

"(E) The levies prescribed by section 3709.29 of the Revised Code.

"(F) Divisions (A), (B), (C), (D), and (E) of this section are mandatory and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions." (Bracketed words added.)

Assuming a special health levy for a general health district was properly authorized and submitted to the voters pursuant to Section 3709.29, Revised Code, and thereafter properly approved by the voters, Section 5705.31, Revised Code, expressly provides that such levy shall be approved by the county budget commission without modification. The fact that such a special health levy was properly authorized and submitted to the voters pursuant to Section 3709.29, Revised Code, presupposes that the county budget commission had already completed its duties prescribed by Section 3709.28, Revised Code. In Opinion No. 738, Opinions of the Attorney General for the year 1957, at page 286, I pointed out that the then existing statutes did not provide for continuing supervision by the

county budget commission of the funds of a general health district and that when the county budget commission had performed the duties prescribed by Section 3709.28, Revised Code, it had no further duty or authority with respect to the estimates of expenses or the itemization thereof.

Section 3709.28, Revised Code, was recently amended (Amended Senate Bill No. 257, effective November 24, 1967), which amendment in part added the following provision:

"Subject to the aggregate amount as has been apportioned among the townships and municipalities and as may become available from the several sources of revenue, the board of health may, by resolution, transfer funds from one item in their appropriation to another item, reduce or increase any item, create new items, and make additional appropriations or reduce the total appropriation. Any such action shall forthwith be certified by the secretary of the board of health to the auditor for submission to and approval by the budget commission."

This modification requires certain actions taken by the board of health be submitted to the budget commission for approval but does not authorize the budget commission to modify the aggregate amount initially determined pursuant to such section sua sponte, or otherwise.

I am of the opinion and you are advised that:

1. The aggregate appropriation of a general health district, as fixed by the county budget commission, shall be apportioned by the county auditor among the townships and municipalities composing the general health district on the basis of taxable valuations in such townships and municipal corporations, pursuant to Section 3709.28, Revised Code. Such taxable valuations are based upon the taxable real and public utility property listed on the general tax list and duplicate compiled and made up pursuant to Section 319.28, Revised Code, and the taxable personal property listed on the general tax list and duplicate compiled and made up pursuant to Section 319.29, Revised Code. Such taxable valuations are not based upon the taxable personal property listed on the classified tax list and duplicate compiled and made up pursuant to Section 319.34, Revised Code.

2. When a county budget commission has properly fixed the aggregate appropriation of a general health district pursuant to Section 3709.28, Revised Code, and a special health levy, authorized by Section 3709.29, Revised Code, has been approved by the voters, the county budget commission may not reduce the aggregate appropriation previously fixed by such commission.