

OPINION NO. 85-003**Syllabus:**

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.
2. Pursuant to R.C. 3709.34, it is within the discretion of a board of county commissioners to determine if the quarters furnished for a general health district are suitable; however, such quarters must, at a minimum, enable the general health district to discharge its duties mandated by Ohio law.

To: Steve C. Shuff, Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 13, 1985

I have before me your request for my opinion concerning the Seneca County General Health District. Your request concerns the question of which body has authority to decide whether quarters for a general health district are suitable, within the meaning of R.C. 3709.34. I understand that your question has arisen with regard to a dispute between the Seneca County General Health District and the Seneca County Board of Commissioners resulting from a request by the general health district for additional space to be used as clinic rooms.

The powers and duties of a general health district are set forth within R.C. Chapters 3707 and 3709. R.C. 3709.34 states: "The 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." A general health district has jurisdiction over all townships and villages within the county, R.C. 3709.01, and thus would fall within the scope of R.C. 3709.34. See 1980 Op. Att'y Gen. No. 80-086. Despite the use of the term "may," R.C. 3709.34 has been consistently interpreted as imposing a mandatory duty upon a board of county commissioners to furnish suitable quarters for a general health district. The word "may" is generally regarded as imperative when it appears in a statute conferring authority to perform an act which the public

interest demands. See, e.g., Pennsylvania Railroad Co. v. Porterfield, 25 Ohio St. 2d 223, 267 N.E.2d 792 (1971). See also 1983 Op. Att'y Gen. No. 83-081. It has been concluded that the public interest requires that a board of health of a general health district function, and that facilities be furnished to the board to enable it to carry out its statutory duties; thus, it has been concluded that R.C. 3709.34 imposes a mandatory duty upon a board of county commissioners to furnish suitable quarters for a general health district. See Op. No. 80-086; 1972 Op. Att'y Gen. No. 72-098; 1949 Op. Att'y Gen. No. 1085, p. 737; 1932 Op. Att'y Gen. No. 3989, vol. 1, p. 106.

I am unaware of any authority which addresses your specific question as to whether the board of county commissioners or the board of health decides whether furnished quarters are suitable under R.C. 3709.34. A similar question was, however, addressed in State ex rel. Bittikofer v. Babst, 97 Ohio St. 64, 119 N.E. 136 (1917). In that case, the court addressed what is now R.C. 305.22, which requires county commissioners to provide a suitable place for holding the courts of a county until a permanent seat of justice is erected. The court stated therein that, "[u]ntil such permanent seat of justice is erected, Section 2418, General Code [R.C. 305.22] vests in the county commissioners discretion to determine what is a suitable place for holding the courts of the county. Their determination of that question will not be interfered with except for abuse of discretion." 97 Ohio St. at 64, 119 N.E. at 136-37. Although there are significant distinctions between the situations of providing suitable quarters for courts of the county and for the general health district, the analysis regarding the county commissioners' discretion is instructive with regard to your question. In the discharge of its mandatory duty to furnish suitable quarters to the general health district, the board of county commissioners is given the discretion to determine what is suitable. The exercise of discretion may, of course, be judicially challenged by the general health district should the board of health be of the opinion that the quarters provided are so unsuitable as to prevent the discharge of its mandatory duties. The commissioners' decision will be overturned, however, only upon a showing of an abuse of discretion. See generally State ex rel. Bittikofer v. Babst, 97 Ohio St. 64, 119 N.E. 136 (1917).

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.

¹ When a general health district is formed by the union of a general health district and a city health district pursuant to R.C. 3709.07, either the legislative authority of the city or the board of county commissioners may furnish offices to the health district, although neither is required to do so, or the expense of renting quarters may be treated as an operating expense and apportioned in the same manner as other operating expenses are apportioned under the contract creating the combined general health district. See 1983 Op. Att'y Gen. No. 83-081; 1954 Op. Att'y Gen. No. 3499, p. 47.

² The primary distinction between the duty of the board of county commissioners to provide suitable quarters for the courts of the county and the duty to provide suitable quarters for the general health district is that the courts represent a coordinate branch of government and thus possess inherent powers not given to a general health district. See State ex rel. Finley v. Pfeiffer, 163 Ohio St. 149, 154-55, 126 N.E.2d 57, 61 (1955) ("a court of general jurisdiction has great inherent power to acquire and control the ordinary facilities which are essential to secure and safeguard the free and untrammelled exercise of its functions. However, that inherent power can not be exercised except for the acquisition of necessary as distinguished from desirable quarters and space"). See also State ex rel. Hottle v. Board of County Commissioners, 52 Ohio St. 2d 117, 370 N.E.2d 462 (1977); In re Rooms and Facilities of the Common Pleas Court of Marion County, 162 Ohio St. 345, 123 N.E.2d 521 (1954); Zangerle v. Court of Common Pleas, 141 Ohio St. 70, 46 N.E.2d 865 (1943); State ex rel. Bittikofer v. Babst, 97 Ohio St. 64, 119 N.E. 136 (1917); 1976 Op. Att'y Gen. No. 76-064.

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.

Your specific concern is whether the county commissioners are required to provide clinic room space when requested to do so by the general health district. I believe that the answer to this question is implicit in the foregoing discussion. If the clinic space is necessary for the general health district in order that it may discharge its mandatory duties, then the board of county commissioners, pursuant to R.C. 3709.34, is obligated to furnish suitable quarters. It is within the discretion of the county commissioners to determine whether the quarters furnished are suitable.

It is, therefore, my opinion, and you are hereby advised, that:

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.
2. Pursuant to R.C. 3709.34, it is within the discretion of a board of county commissioners to determine if the quarters furnished for a general health district are suitable; however, such quarters must, at a minimum, enable the general health district to discharge its duties mandated by Ohio law.