

**Note from the Attorney General's Office:**

1991 Op. Att'y Gen. No. 91-016 was overruled in part  
as a result of legislative enactment by  
2018 Op. Att'y Gen. No. 2018-013.

**OPINION NO. 91-016****Syllabus:**

1. A combined general health district may be created pursuant to R.C. 3709.07 by the union of a general health district and one or more city health districts; such a combined general health district also constitutes a general health district.
2. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a city may, but is not required to, furnish office space for a combined general health district created under R.C. 3709.07. (1983 Op. Att'y Gen. No. 83-081, syllabus, paragraph 1, approved and followed.)
3. If office space is not furnished to a combined general health district under R.C. 3709.34, the expense of securing such office space is an operating expense of the district, to be apportioned as provided in the contract creating the district. (1983 Op. Att'y Gen. No. 83-081, syllabus, paragraph 2; 1976 Op. Att'y Gen. No. 76-066; and 1954 Op. Att'y Gen. No. 3499, p. 47, approved and followed.)
4. The board of health of a combined general health district created under R.C. 3709.07 has no authority to acquire real property except by gift or devise and, accordingly, may not use operating levy funds to purchase suitable quarters for the health district. (1991 Op. Att'y Gen. No. 91-015, approved and followed.)
5. The board of health of a combined general health district created under R.C. 3709.07 is not precluded from renting space for suitable quarters from the county in which the district is located.
6. A board of county commissioners may purchase or build a facility for the purpose of renting that space to the board of health of a combined general health district that is created under R.C. 3709.07 and located within the county.

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**To: Mark E. Spees, Auglaize County Prosecuting Attorney, Wapakoneta, Ohio**  
**By: Lee Fisher, Attorney General, April 10, 1991**

I have before me your request for an opinion on several questions pertaining to combined general health districts. Your specific questions are as follows:

1. What constitutes a "combined General Health District"?
2. Does Auglaize County have a "combined General Health District" or a "General Health District"?
3. If Auglaize County has a "combined General Health District" must the County Commissioners provide them with suitable space for quarters?
4. If the County Commissioners are not responsible for the provision of suitable space for quarters for the Health Department, who is?
5. If Auglaize County has a "combined General Health District", may the Board of Health expend operating levy funds, to purchase suitable quarters for the Health Department?
6. If Auglaize County is a "combined General Health District" may the "combined General Health District" rent space from Auglaize County?

The State of Ohio is, pursuant to statute, divided into health districts. R.C. 3709.01. Each city constitutes a health district known as a "city health district." R.C. 3709.01. The villages and unincorporated townships in each county are combined into a health district known as a "general health district." R.C. 3709.01;

see 1985 Op. Att'y Gen. No. 85-033. The health districts are political subdivisions of the state, governed by state law, and are separate from any city, county, township or other local government. See, e.g., *State ex rel. Mowrer v. Underwood*, 137 Ohio St. 1, 27 N.E.2d 773 (1940); 1990 Op. Att'y Gen. No. 90-106; 1980 Op. Att'y Gen. No. 80-087 at 2-342 (general health districts are not part of municipal or county government but are, rather, distinct political subdivisions of the state); 1974 Op. Att'y Gen. No. 74-032 at 2-144 (a general health district is an arm of the state that derives its authority directly from the state); 1946 Op. Att'y Gen. No. 899, p. 289.

Each general health district has a board of health. R.C. 3709.02. Members of the board of health are appointed by the district advisory council, which consists of the president of the board of county commissioners, the chief executive of each municipal corporation not constituting a city health district, and the chairman of the board of township trustees of each township within the district, or of alternates selected to represent those entities. R.C. 3709.02; R.C. 3709.03; see generally 1955 Op. Att'y Gen. No. 5699, p. 434. If the district advisory council fails to meet or to select a board of health, the Director of Health may, with the consent of the Public Health Council, appoint a board of health for the district. R.C. 3709.04. A city health district also has a board of health. R.C. 3709.05. Members of such a board are ordinarily appointed by the mayor and confirmed by the legislative authority of the city. R.C. 3709.05.

City health districts and general health districts are permitted to unite with one another in various combinations. See R.C. 3709.01; R.C. 3709.051 (union of two or more contiguous city health districts into a single city health district); R.C. 3709.07 and 3709.071 (union of a general health district and one or more city health districts into a combined district); R.C. 3709.10 (union of two or more contiguous general health districts, not to exceed five, into a combined district). The board of health of a city, general, or combined health district is a creature of statute that has only those powers that are expressly granted by statute or necessarily implied therefrom. See, e.g., 1983 Op. Att'y Gen. No. 83-067.

The term "combined general health district" is used in the Revised Code to refer to a district formed when one or more city health districts unite with a general health district pursuant to R.C. 3709.07, and the same term is used to refer to a district formed when two or more contiguous general health districts, not to exceed five, unite pursuant to R.C. 3709.10. The term "combined district" is used to refer to these combined general health districts, see R.C. 3709.07; R.C. 3709.10, and also to refer to unions of city health districts, see R.C. 3709.052, and to unions of a general health district and one or more city health districts pursuant to R.C. 3709.071. The terms "general health district" and "combined district" are rendered more confusing by the fact that a district formed by the union of a general health district and one or more city health districts is designated as a general health district, see R.C. 3709.07-.071, and a district formed by the union of two or more contiguous general health districts is also designated as a general health district, see R.C. 3709.10.

In considering what constitutes a "combined general health district" it is, therefore, helpful to know the context in which the term is used. Your questions arise in connection with the provision of space for quarters of a health district. Your use of the term "combined general health district" is derived from 1983 Op. Att'y Gen. No. 83-081, in which the term is used to describe a general health district formed by the union of a general health district and one or more city health districts pursuant to R.C. 3709.07. Op. No. 83-081 concludes that, when such a district is formed, "a board of county commissioners or the legislative authority of a municipality may, but is not required to, furnish office space" for the district pursuant to R.C. 3709.34. Op. No. 83-081 (syllabus, paragraph 1). In Op. No. 83-081, the reference to "a municipality" is clearly to a city that is part of the combined general health district. Op. No. 83-081 also concludes that, if no city or county furnishes quarters to a combined general health district under R.C. 3709.34, "the expense of securing such office space is an operating expense of the district and must be apportioned in the same manner as other such expenses are apportioned in the contract creating such district." Op. No. 83-081 (syllabus, paragraph 2).

The question whether the furnishing of office space to a health district is mandatory arises from a consideration of R.C. 3709.34, which 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.

The word "may" has generally been construed to mean "must" in this statute. See 1989 Op. Att'y Gen. No. 89-038; 1986 Op. Att'y Gen. No. 86-037; 1985 Op. Att'y Gen. No. 85-003 at 2-7 ("[d]espite 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"); 1980 Op. Att'y Gen. 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. I, p. 106.

An exception to the construction of R.C. 3709.34 as mandatory has, however, been recognized when the health district in question is a combined general health district created pursuant to R.C. 3709.07, for the statute does not indicate whether the county or a city should bear the responsibility of providing office space in such circumstances. On this point, 1954 Op. Att'y Gen. No. 3499, p. 47, states:

Section 3709.34...in and of itself furnishes no indication of the legislative intent in this connection. As a matter of first impression it might be concluded that the obligation to house a combined general health district devolves upon the county commissioners since such a district has "\*\*\*\*jurisdiction over all or any part of such county\*\*\*\*." However, by the same token, the district also has jurisdiction over all of the city, in this instance, and the statute is equally susceptible of the construction that the duty to provide quarters rests with the legislative authority of such city. Consequently any interpretation of the statute which would impose this mandate upon one or the other would appear to be inequitable and the result of an arbitrary choice not justified by the terminology of the statute. At most, in the case of a general health district formed by a union of a city health district and general health district, Section 3709.34...can be said to be permissive in character, so as to allow the county commissioners or the legislative authority of the city to furnish quarters if either chooses to do so.

....  
The fact that the legislature has not seen fit to provide specifically for such a case indicates strongly to me that it was intended that the matter of quarters and the rental expense thereof should be determined by the mutual agreement required upon the union of a city health district and the general health district. Section 3709.07, Revised Code, specifically provides in substance that the chairman of the district advisory council and the chief executive of the city "\*\*\*\*shall enter into a contract for the administration of health affairs in the combined district\*\*\*\*", and further provides that "\*\*\*\*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.\*\*\*\*" Accordingly, if the contract makes no specific provision for quarters or for the rental thereof, such rent should be considered as an operating expense of the combined general health district and apportioned in the same manner as provided therein for other such expenses.

1954 Op. No. 3499 at 49-50. The conclusion that R.C. 3709.34 does not impose a mandate upon either a county or a city in the case of a combined general health district created under R.C. 3709.07 was followed in Op. No. 83-081 and was referenced in Op. No. 85-003 at 2-8 n. 1 and in 1989 Op. Att'y Gen. No. 89-038 at 2-167 n. 1. See also 1976 Op. Att'y Gen. No. 76-066.<sup>1</sup>

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<sup>1</sup> In certain instances, opinions of prior Attorneys General have discussed the mandatory duty of a county to provide suitable quarters for a general health district, or to provide and pay for the utilities for such a district, without specifying whether the district in question was a combined general

You have provided me with documentation indicating that Auglaize County has a combined general health district created pursuant to R.C. 3709.07 by the union of a general health district encompassing the townships and villages within the county and two city health districts within the county. A telephone call with the Ohio Department of Health confirms that this is the type of health district currently in existence in Auglaize County.<sup>2</sup> Such a health district is a "combined general health district" as that term is used in Op. No. 83-081 and 1954 Op. No. 3499, and the health district fits squarely within the principles enumerated in those opinions. Op. No. 83-081 states, in the syllabus:

1. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a municipality may, but is not required to, furnish office space for a combined general health district formed under R.C. 3709.07.
2. If office space is not furnished to a combined general health district under R.C. 3709.34, the expense of securing such office space is an operating expense of the district and must be apportioned in the same manner as other such expenses are apportioned in the contract creating such district. (1954 Op. Att'y Gen. No. 3499, p. 47 and 1976 Op. Att'y Gen. No. 76-066, approved and followed.)

I affirm these conclusions and apply them to the situation with which you are concerned.

A combined general health district is formed under R.C. 3709.07 when the district advisory council of a general health district and the legislative authority of one or more cities vote for union of the health districts. After an affirmative vote by the majority of each such body, the chairman of the council and the chief executive of each city enter into a contract for the administration of health affairs in the combined district. R.C. 3709.07. The 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 or cities and by the original general health district." R.C. 3709.07. The contract may provide that the administration of the combined district shall be taken over by the board of health or health department of one of the cities, by the board of health of the original general health district, or by a combined board of health. The contract is subject to modification by agreement of the parties. *See, e.g.*, Op. No. 83-081 at 2-326 ("[t]he contracting parties [that formed a combined general health district under R.C. 3709.07] are...free to alter or amend their agreement or to contract further in order to clarify the matter of provision of suitable quarters"); 1980 Op. Att'y Gen. No. 80-048. *See generally* 1988 Op. Att'y Gen. No. 88-076. Pursuant to R.C. 3709.34, the board of county commissioners or the legislative authority of a city may furnish the health district with suitable quarters. If no county or city chooses to provide such space, and if the contract contains no provisions regarding office space, then the district may secure its own space by treating the cost of such space as a general operating expense. *See, e.g.*, Op. No. 83-081; Op. No. 76-066; 1954 Op. No. 3499 (syllabus) ("[i]n a combined general health district formed by the union of a general health district and a city

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health district. *See, e.g.*, 1986 Op. Att'y Gen. No. 86-037; 1980 Op. Att'y Gen. No. 80-086. I assume in each such instance that the analysis set forth in the opinion was intended to apply only to a general health district that was not a combined general health district.

<sup>2</sup> The opinion-rendering function of the Attorney General is not an appropriate forum for making findings of fact. *See, e.g.*, 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). I defer, therefore, to the fact-finding function performed by your office and the Ohio Department of Health, and I assume that the health district in Auglaize County is currently constituted as described in your correspondence.

health district, the item of rent is a proper item to be budgeted by the health commissioner in his annual budget, where such health district is occupying private quarters where rent must be paid").

It has been generally established that a combined general health district may use operating moneys to rent office space. See Op. No. 83-081; Op. No. 76-066 (syllabus) ("[a] combined general health district may provide for the rental of quarters by virtue of the contract signed pursuant to R.C. 3709.07 and R.C. 3709.28 which allows the board of health to alter, change, or create items in the appropriations"); 1954 Op. No. 3499. But see 1932 Op. No. 3989 (finding that a city board of health had no authority to rent quarters because the council of the municipal corporation was required to provide suitable quarters for the board of health of the city health district). In 1991 Op. Att'y Gen. No. 91-015, I considered whether a combined general health district could purchase real estate to use as office space and concluded that it could not. I affirm that conclusion in response to your inquiry. See generally, e.g., 1982 Op. Att'y Gen. No. 82-018 (discussing the premise that the power to contract for the provision of facilities does not necessarily imply the power to purchase real property). Since a combined general health district has no authority to purchase real estate to use as office space, it is clear that operating levy funds may not be used for such a purpose.

I note, however, as mentioned in Op. No. 91-015, slip op. at 2 n. 2, that the board of health of a combined general health district may receive real property by gift or devise and hold and apply the real property according to the terms of the gift or devise. See 1989 Op. Att'y Gen. No. 89-032. This power is derived from the power to accept gifts; it does not constitute general authority for a board of health to acquire real property in order to provide suitable quarters for the health district. Op. No. 91-015, slip op. at 2 n. 2. This power does not, therefore, authorize a health district to expend operating levy funds to purchase real property.

I turn now to the question whether the combined general health district may rent space from the county in which it is located. As discussed above, the county is authorized by R.C. 3709.34 to furnish suitable headquarters for a combined general health district located within the county, but is not required to do so. R.C. 3709.34 does not directly address the question whether a county may charge rent for space that it furnishes.

R.C. 307.09 sets forth the general authority of a county to lease to another governmental entity real property that is owned by the county. R.C. 307.09(B) states, in part:

*The board [of county commissioners] may grant leases, rights, and easements to the United States government, to the state or any department or agency thereof, or to municipal corporations or other governmental subdivisions of the state for public purposes...or in lands owned by the county where such lease, right, or easement is not deemed by the board to be inconsistent with the need of such land for public use by the county. Any such lease, right, or easement...may be for such length of time, upon such terms, for such purposes, and may provide for such renewals thereof as the board deems for the best interests of the county. (Emphasis added.)*

See generally, e.g., 1986 Op. Att'y Gen. No. 86-061; 1984 Op. Att'y Gen. No. 84-096.

In the case of a combined general health district, the board of county commissioners has no obligation to furnish suitable quarters to the district. It is, however, clear that a combined general health district is a governmental subdivision of the state, see Op. No. 80-087 at 2-342, and that the activities of such a health district serve public purposes, see R.C. Chapter 3709. It follows that the board of county commissioners may, pursuant to R.C. 307.09, lease to the combined general health district real property owned by the county on such terms as the board deems to serve the best interests of the county, provided that the lease is not deemed by the board to be inconsistent with the need of such land for public use by the county. Compare R.C. 307.09 with, e.g., 1986 Op. Att'y Gen. No. 86-104 and 1982 Op.

Att'y Gen. No. 82-011 (discussing the principle that the county may not charge county offices for office space or services that it provides absent express or implied statutory authority to impose such a charge). As discussed above, the board of health of a combined general health district is authorized to expend its operating funds to rent suitable quarters for the district, if such quarters are not furnished without charge by a county or city. The board of health of a combined general health district is not precluded from renting such quarters from the county in which the district is located, if that county has property available for such purpose.

Your letter of request raises the issue of whether the board of county commissioners may purchase or build a facility for the purpose of renting that space to the combined general health district. The statutory scheme appears to permit such action. R.C. 307.02 authorizes the board of county commissioners to purchase or construct property for various public purposes, including "other necessary buildings." *See generally, e.g.*, 1972 Op. Att'y Gen. No. 72-040 at 2-153 ("the apparent intent of the legislature [as expressed in R.C. 307.09] was to enable a board of county commissioners to provide a wide range of buildings and structures which serve public purposes"). R.C. 3709.34 makes the provision of quarters for a health district a proper county purpose. R.C. 307.09 authorizes the leasing of space by the county to the health district. It appears, accordingly, that a board of county commissioners may purchase or build a facility for the purpose of renting that space to the board of health of a combined general health district. *See generally, e.g.*, 1977 Op. Att'y Gen. No. 77-057; Op. No. 72-040 (syllabus) ("[a] board of county commissioners has authority under [R.C. 307.02 and 307.09] to lease from, and lease back to, a private non-profit corporation, land on which such corporation will construct an amphitheater for the purpose of presenting historical dramas"); 1971 Op. Att'y Gen. No. 71-070 (syllabus, paragraphs 1 and 3) ("[a] board of county commissioners is authorized, under [R.C. 307.02], to appropriate private property as a site for a mental health or retardation facility upon the recommendation and request of the community mental health and retardation board" and under R.C. 307.09 to "lease such appropriated property for a period of 40 years to a private non-profit corporation, which will construct and operate a mental health facility thereon, provided such lease is not inconsistent with the need of such land for public use by the county itself"); 1968 Op. Att'y Gen. No. 68-152 (syllabus, paragraph 1) ("[a] board of county commissioners is authorized by law to issue bonds for the construction of a county courthouse larger than that required to meet the present and/or future needs of the county and with the express intention of leasing the surplus space to a municipal corporation located within the county").

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

1. A combined general health district may be created pursuant to R.C. 3709.07 by the union of a general health district and one or more city health district's; such a combined general health district also constitutes a general health district.
2. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a city may, but is not required to, furnish office space for a combined general health district created under R.C. 3709.07. (1983 Op. Att'y Gen. No. 83-081, syllabus, paragraph 1, approved and followed.)
3. If office space is not furnished to a combined general health district under R.C. 3709.34, the expense of securing such office space is an operating expense of the district, to be apportioned as provided in the contract creating the district. (1983 Op. Att'y Gen. No. 83-081, syllabus, paragraph 2; 1976 Op. Att'y Gen. No. 76-066; and 1954 Op. Att'y Gen. No. 3499, p. 47, approved and followed.)
4. The board of health of a combined general health district created under R.C. 3709.07 has no authority to acquire real property except by gift or devise and, accordingly, may not use operating levy funds to purchase suitable quarters for the health district. (1991 Op. Att'y Gen. No. 91-015, approved and followed.)

5. The board of health of a combined general health district created under R.C. 3709.07 is not precluded from renting space for suitable quarters from the county in which the district is located.
6. A board of county commissioners may purchase or build a facility for the purpose of renting that space to the board of health of a combined general health district that is created under R.C. 3709.07 and located within the county.