OPINION NO. 72-098

Syllabus:

A board of county commissioners must provide suitable quarters for the county health department either inside the county courthouse or elsewhere.

To: Herman G. Cartwright, Jr., Clinton County Pros. Atty., Wilmington, Ohio
By: William J. Brown, Attorney General, October 30, 1972

Your request for my opinion reads as follows:

> "In Clinton County, the Common Pleas Court has made a request for more room to house the operation of the Common Pleas Court and the Probate and Juvenile Courtrooms and offices, and the Commissioners of Clinton County, Ohio, have found it necessary to ask several of the County offices to remove themselves from the County

Courthouse with regard to the request of the Court.

"The Clinton County Health Department has been requested to remove itself and to find other quarters, and the question has been posed by the Health Commissioner to my office with regard to the necessity of the Commissioners to provide quarters for the Health Department in another location and in another building outside of the Clinton County Courthouse.

"I would like to request your opinion with regard to the necessity and mandatory action on the part of the Commissioners to provide quarters for Clinton County Health Department outside of the Courthouse structure. It is my interpretation of the Revised Code that the Commissioners may provide quarters, but I do not find a mandatory section or statement of law requiring them to find quarters, but I do find that in an attorney general's opinion of 1932, which was followed in 1949, saying that the Commissioners must provide suitable quarters.

"I am enclosing a copy of the opinion, and would appreciate a reply from your office at your earliest convenience. You will note that in the opinion the attorney general pointed out the old general code section which is still approximately the same in the Revised Code, wherein the County Commissioners may furnish quarters that are suitable, and I do not see how the word 'may' can be construed as 'shall' as set forth in the opinion; however, if that is the correct interpretation and the way the matter is being handled now, I would appreciate your report."

Section 3709.34, Revised Code, which is approximately the same as Section 1261-36, General Code, reads as follows:

"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."

This Section was originally enacted in April, 1919, with the wording "It shall be the duty of the county commissioners", but in December of the same year the Section was amended to provide, "The county commissioners may furnish", etc. The need for such quarters apparently was more acute at that time in some counties than in others.

Thirteen years later, one of my predecessors, despite this legislative history, reasoned as follows in Opinion No. 3989, Opinions of the Attorney General for 1932:

"* * * It is well settled in the State of Ohio that 'The word 'may' when used in statutes which confer powers upon officers or official boards is construed to be the equivalent of 'shall' or 'must' where the public has an interest in the exercise of the powers conferred.' State,ex rel. vs. Evans, 30 O.A. 419. See also State, ex rel. Myers vs. Board of Education of Spencer Twp., 95 O.S. 367;

Stanton vs. Frankel Bros. Realty Co., et al.,117 O.S. 345.

> "There is no doubt but that public interest requires that a city board of health function and that facilities be furnished to the said board to carry out the duties imposed upon it by statute."

This view was followed seventeen years later by the then Attorney General in Opinion No. 1085, Opinions of the Attorney General for 1949. See also Opinion No. 72-027, Opinions of the Attorney General for 1972.

The latest case of importance dealing with the interpretation of the word "may" is The Pennsylvania Rd. Co. v. Porterfield, 25 Ohio St. 2d 223 (1971). In this case the Court spoke as follows (at page 226):

> "While R.C. 5717.02 employs the word 'may' in referring to the power of the Board of Tax Appeals to make such investigations 'as it deems proper,' that word is to be construed as 'shall,' where a matter of public interest is involved.
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> "'Where authority is conferred to perform an act which the public interest demands, may is generally regarded as imperative.' Columbus, Springfield & Cincinnati Rd. Co. v. Mowatt (1880), 35 Ohio St. 284, 287. In Lessee of Swazey's Heirs v. Blackman (1837), 8 Ohio 5, 19, it was stated that the word 'may' means 'must' in all those cases where the public is interested, or where a matter of public policy, and not merely of private right, is involved. See, also, Stanton v. Frankel Brothers Realty Co. (1927), 117 Ohio St. 345."

It is my opinion that the reasoning of my predecessors is applicable today and contains the answer to your request. An Opinion of the Attorney General is, of course, recognized and followed as the law until overruled by a court,or by an amendment to the statute indicating legislative disapproval. See Richards v. State, 110 Ohio St. 311 (1924). Neither event has taken place in the forty years since the first Opinion. The public interest in the functions of boards of health has vastly increased since this statute was first enacted in 1919.

In specific answer to your question it is my opinion, and you are so advised, that a board of county commissioners must provide suitable quarters for the county health department either inside the county courthouse or elsewhere.