

1806.

HEALTH DISTRICT—STATE SUBSIDY THERETO AS PROVIDED IN SECTION 1261-39, GENERAL CODE, MAY NOT BE WITHHELD WHEN COUNTY IN WHICH HEALTH DISTRICT LOCATED INDEBTED TO STATE OF OHIO.

SYLLABUS:

Funds for the reimbursement of health districts within the state of Ohio, for a portion of the salaries of health commissioners, public health nurses and clerks, to be borne from state funds as provided by Section 1261-39, General Code, may not be withheld for the reason that the county of which the health district is a part is indebted to the state of Ohio.

COLUMBUS, OHIO, November 2, 1933.

HON. PAUL V. WADDELL, *Prosecuting Attorney, St. Clairsville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“May I have your opinion as to whether the Finance Director of Ohio has the right to withhold payment of the state subsidy to the county health district for the reason the county is indebted to the state?”

Legislation having for its object the preservation of the public health has been enacted by the General Assembly, and is embodied in Sections 154-3, 154-43 and 154-44, and Sections 1232 to 1261-43 of the General Code of Ohio.

The state department of health is created by Section 154-3, General Code, to be administered by the director of health, a position thereby created. The state department of health is also created by Section 1232, General Code, which was not repealed upon the adoption of the Administrative Code in 1921. Section 1233, General Code, enacted at the same time the Administrative Code was adopted and as a part of the same act, provides for a commissioner of health and a public health council. Direct reference is made to the state department of health as created by Section 1232, General Code and to the commissioner of health referred to in Section 1233, General Code in Sections 154-43 and 154-44, General Code enacted as a part of the Administrative Code.

For the purpose of local administration of the provisions of law relating to the public health, the state is divided into districts by Section 1261-16, General Code. Said section reads as follows:

“For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act (G. C. §§ 1261-16 et seq.) shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district.”

Sections 1261-17 and 1261-18, General Code, provide for district boards of health to administer the affairs of health districts. Section 1261-19, General Code,

provides for the appointment of a district health commissioner in general health districts, and Section 1261-22, General Code, provides for the appointment of a clerk for general health district boards of health and for public health nurses in such districts. Section 1261-39, General Code, reads as follows:

“When any general or city health district has been duly organized as provided by this act (G. C. §§1261-16 to 1261-22 and §§1261-25 et seq.) and has employed for whole or part time service a health commissioner, the chairman of the board of health, or the principal executive officer of the department of health as the case may be, shall semi-annually, on the first day of January and of July, certify such fact to the state commissioner of health, stating the salary paid such health commissioner, and to the public health nurse and clerk, if any, during the preceding six months. If such board of health or health department has complied with the orders and regulations of the state department of health and has truly and faithfully complied with the provisions of this act, the state commissioner of health shall endorse such facts on the certificate and shall transmit the certificate to the auditor of state, who shall thereupon draw a voucher on the treasurer of state to the order of the custodian of the funds of such health district, payable out of the general revenue fund, in amount equal to one-half of the amount paid by the district board of health or health department to such health commissioner, public health nurse, and clerk, during such semi-annual period. Provided, that if the amount paid by such district board of health or health department during any six months is in excess of two thousand dollars, the amount to be paid by the auditor of state shall be one thousand dollars and no more, and no payment shall be made unless the certificate of the district board of health or health department shall have been endorsed by the state commissioner of health as herein provided.”

I assume the “state subsidy” spoken of in your inquiry has reference to that part of the salary of a health commissioner, public health nurses and clerk in a general health district, for which a general health district is to be reimbursed from the state treasury in accordance with Section 1261-39, *supra*.

This obligation of the state is definitely fixed by statute and the provision therefor is couched in mandatory language. If the certificate of the district board of health, showing that the amount paid a district health commissioner, public health nurses and clerk is properly made and endorsed by the state commissioner of health, it is the duty of the auditor of state to draw a voucher payable to the custodian of the funds of such health district in an amount fixed by said Section 1261-39, General Code, provided there exists a proper appropriation from which payment may be made. The auditor has no choice in the matter, nor does the director of finance have the power to disapprove the expenditure or withhold his certificate as provided for by Section 2288-2, General Code. The issuance of this certificate is not discretionary with the director of finance but is a mere ministerial act providing that a voucher for the payment of such an obligation has been regularly and properly submitted to the department of finance and there exists a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations. *State ex rel. vs. Baker*, 112 O. S. 356.

The 90th General Assembly, in its General Appropriation Act, House Bill No. 699, appropriated for this purpose the sum of \$150,000 for 1933 and \$150,000

for 1934, under the classification "Department of Health—Maintenance—H, 8—State's contribution to salaries of district health commissioners, public health nurses and clerks." I am not advised as to the extent the appropriation for 1933 has been encumbered at this time.

The functions of the department of finance and the powers and duties of the director of finance are set out in Sections 154-28 et seq. General Code. It is not necessary for the purposes of this opinion, to review these statutes or to consider in detail the duties and powers of the director of finance with respect to the approval or disapproval of vouchers involving an expenditure or payment of state funds.

It clearly appears from the terms of Section 1261-16 supra, that the health districts thereby created are separate and distinct political subdivisions from other subdivisions of the State. A city health district and a city, although they may embrace precisely the same territory, are separate entities. So also are general health districts and counties. *Board of Health etc. vs. State ex rel. O'Wesney*, 40 O. App. 77; Opinions of the Attorney General for 1930, pages 210 and 1348; Opinion of the Attorney General No. 1527, rendered under date of September 9, 1933.

It follows that no duty or obligations due to the state from a county could, by any course of reasoning, be regarded as a set-off against an obligation of the state due to the custodian of the funds of a general health district within the county, as the county and health district are two separate and distinct entities and neither one can be held for the obligations of the other.

Moreover, the obligation of the state to reimburse a health district for a portion of the salaries of the health commissioner, public health nurses and clerk, is an obligation created and fixed by statute, and is therefore, not a proper subject of set-off, it not being an obligation created by contract or the judgment of a court. (Section 11319, General Code.)

I am advised by the Director of Finance that there has been no attempt on his part to hold up the payment of moneys due to a county for the purpose of paying the state's portion of the salaries of the health commissioner and the clerk of the district board of health and the public health nurses. It has been far from his idea to do this. It is a fact, however, that, although an appropriation has been made of \$150,000 for the year 1933 for that purpose, it has been impossible to make many of these payments because of a lack of funds to meet the appropriation. Some talk has been indulged in, to the effect that if the counties throughout the state, which, in the aggregate, owe a large sum of money to the state treasury would meet their obligations, the state would have more funds with which to meet its obligations, but it was not meant thereby that the state was withholding funds from public health districts as a means of collecting the amounts owed to the state from the counties or of offsetting one against the other.

In specific answer to your question, I am of the opinion that funds for the reimbursement of health districts within the state of Ohio, for a portion of the salaries of health commissioners, public health nurses and clerks, to be borne from state funds as provided by Section 1261-39, General Code, may not be withheld for the reason that the county of which the health district is a part is indebted to the state of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.