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BOARDS OF HEALTH—VILLAGES BECOMING CITIES WERE AUTOMATICALLY REMOVED FROM COUNTY HEALTH DISTRICTS—HOW HEALTH BOARD MEMBERS WHO NOW RESIDE IN TERRITORY MAY RETAIN THEIR MEMBERSHIP—RESIDENCE QUALIFICATION OF COUNTY HEALTH COMMISSIONERS.

SYLLABUS:

1. *Villages becoming cities on December 31, 1930, were automatically removed from county general health districts.*
2. *Members of boards of general health districts residing in village territory which became city territory on December 31, 1930, vacate their offices unless they move to general health district territory within a reasonable time thereafter.*
3. *County health commissioners need not reside in general health district territory to qualify for their positions.*

COLUMBUS, OHIO, January 26, 1931.

HON RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication which reads:

"This office is in receipt of a letter by Robert Lockhart, M. D., District Health Commissioner in this County.

We enclose a copy of letter by him sent to us as well as a copy of our reply to him.

The effect of Dr. Lockhart's letter would seem to be to ask this office to interpret a previous opinion by yourself. This fact together with the general consideration that uniformity of practice throughout the State is desirable, leads us to ask your office to render an opinion upon the questions propounded by Dr. Lockhart.

We trust that you will understand that this request is the only practicable method of disposing of this question."

The letter enclosed with your communication, reads as follows:

"The State Department of Health of Ohio has recently stated in a bulletin that the eight villages of Cuyahoga County, namely, Euclid, Bedford, Garfield Heights, Maple Heights, Rocky River, Parma, Berea, and Shaker Heights, that have been declared cities by the Secretary of State of Ohio, are no longer in the General Health District of Cuyahoga County. The State Department of Health has written a number of the mayors of these eight municipalities and told them to proceed with the formation of a Board of Health. This statement of the State Department of Health is based on an opinion of the Attorney General of the State of Ohio, number 2603, and dated November 28, 1930, a copy of which is enclosed.

The second paragraph of the syllabus states that a member of a general health district board must reside within the boundaries of said district.

I do not believe that this portion of the Attorney General's opinion applies to the General Health District Board of Cuyahoga County. No member of the Cuyahoga County District Board of Health has removed from the General Health District.

1. Further, is it not true that these municipalities, namely, Euclid,

Bedford, Garfield Heights, Maple Heights, Rocky River, Parma, Berea and Shaker Heights are still members of the General Health District of Cuyahoga County as they are still under the village form of government?

2. And, in the second place, is it not true that they should remain in the General Health District until a city form of government is adopted, new officers elected and the new municipalities actually functioning as cities?

These eight new municipalities remaining in the General Health District of Cuyahoga County would be in accordance with precedent.

On Jan. 1, 1921, the village of Cleveland Heights was declared a city by the Secretary of State of Ohio. It continued to function under a village form of government and under the District Board of Health of Cuyahoga County until January 1, 1922, when its city government under its newly elected officers, went into operation."

I am informed that the bulletin of the State Department of Health, which is mentioned in the enclosed letter was sent out on December 31, 1930, to the mayor and council of all municipalities in Ohio, which on that day became cities by reason of having a population of over five thousand, according to the 1930 federal census. After examining a copy of the bulletin, I find that Opinion No. 2603 of this office, rendered November 28, 1930, is not mentioned therein. On the contrary, the only Attorney General's Opinion mentioned is one that is to be found in Opinions of the Attorney General for 1922, Vol. I, Page 167. This opinion is set out in full in the bulletin. The syllabus of this ruling, rendered March 9, 1922, reads:

"Under the provisions of Section 1261-16 of the General Code, a municipality becoming a city by the proclamation of the Secretary of State, becomes a city health district thirty days after the issuance of such proclamation."

You will note that a municipality becomes a city health district thirty days after the issuance of the Secretary of State's proclamation showing that said municipality is over five thousand. I am informed that the Secretary of State issued his proclamation on December 1, 1930. I am also advised that the municipalities which are mentioned in the letter which you enclosed, exceed five thousand in population. Therefore, under the law, as pointed out in the 1922 Opinion, these municipalities became city health districts on December 31, 1930. In order that you may observe the reasoning for the conclusion of the 1922 Opinion, referred to above, I am enclosing you a copy of the bulletin which quotes the entire opinion.

Thus, in specific answer to the first question, I am of the opinion that the municipalities mentioned are no longer part of the Cuyahoga County Health District, having been separated therefrom on December 31, 1930.

The answer to the first question impels a negative answer to the second question, i. e. that said newly created cities do not remain in the county health district until a complete new city government is effected.

Although the question is not directly asked in the letter which you enclosed, I note that your answer to said letter implies the question of whether the Health Commissioner and members of the Cuyahoga County Health Board, who have lived in the aforementioned newly created cities, will be forced to give up their positions on the ground of ineligibility.

In my Opinion No. 2603, already referred to, I held in the second paragraph of the syllabus as follows:

"A member of a general health district board must reside within the boundaries of said district."

Obviously, a member of a county health board must reside in the boundaries of the health district. Since the 1922 Opinion impels the conclusion that the new cities constitute city health districts on and after December 31, 1930, it is my opinion that if any members of the county health district continue to live in the new city territory, they will no longer be residing in county health district territory and will vacate their offices. However, they should be allowed a reasonable time in which to move to county health district territory, and thereby retain their offices.

In an opinion, reported in Opinions of the Attorney General for 1928, Vol. II, Page 984, there was before the Attorney General a somewhat analogous situation. A justice of the peace had resided in a village within his township and the village later became a new township. He was consequently no longer a resident of the township for which he was elected. The question arose as to whether he vacated his office. The syllabus held:

"Where the county commissioners of a county, acting under the provisions of Section 3249, General Code, create a new township out of that part of the territory of an existing township included within the limits of municipal corporation therein, duly elected and qualified justices of the peace of such existing township, residing in such municipal corporation do not become justices of the peace of the new township. They continue to be justices of the peace of the prior existing township in and for which they were elected, and they may perform the duties and exercise the jurisdiction of their respective offices therein, provided they establish their residences within such township within a reasonable time after the creation of the new township. If they do not establish their residences in said prior existing township within a reasonable time, vacancies will be created in said offices which the trustees of such township will be authorized to fill."

I believe that the above opinion applies by analogy to the case here. In other words, county health board members living in the new cities must move to territory inside the county health district within a reasonable time after December 31, 1930, or vacate their offices. See also, Opinion 2347, rendered Sept. 16, 1930.

As for the Health Commissioner's status, it makes no difference where he resides. In support of this conclusion, I need only refer you to an opinion of my immediate predecessor, namely, No. 3047, reported in Opinions of the Attorney General for 1928, Vol. IV, Page 2892. The syllabus of said opinion held:

"A licensed physician living in a city, which is not a part of a general health district, may be appointed or employed as health commissioner of said general health district."

From the foregoing opinion, you can readily see that it is unnecessary for a health commissioner to reside in a general health district to qualify. For your attention and consideration I am enclosing you a copy of the above ruling.

It is believed that the foregoing discussion will answer all of the questions raised in the letter which you enclosed.

Respectfully,
GILBERT BETTMAN,
Attorney General.