

899

1. HEALTH DISTRICT CONSOLIDATED WITH GENERAL HEALTH DISTRICT—MAYOR OF CITY WHERE AFFAIRS OF COMBINED DISTRICT ARE ADMINISTERED BY BOARD OF HEALTH OF ORIGINAL CITY DISTRICT, MAY APPOINT PERSONS NOT RESIDENTS OF CITY AS MEMBERS OF COMBINED HEALTH DISTRICT.
2. APPOINTMENT OF MEMBERS OF BOARD OF HEALTH OF COMBINED GENERAL HEALTH DISTRICT—WHERE AFFAIRS ADMINISTERED BY BOARD OF HEALTH OF CITY HEALTH DISTRICT—SUCH APPOINTMENT MUST BE CONFIRMED BY COUNCIL OF CITY, PART 3 OF COMBINED HEALTH DISTRICT—SECTION 4404 G. C.

SYLLABUS:

1. The mayor of a city, the health district of which has been consolidated with a general health district, the affairs of which combined district are being administered by the board of health of the original city district, may appoint as members of such combined district persons who are not residents of the city.

2. Under the provisions of Section 4404, General Code, the appointment of members of a board of health of a combined general health district, the affairs of which are being administered by the board of health of a city health district, must be confirmed by the council of the city which forms a part of such combined health district.

Columbus, Ohio, April 29, 1946

Roger E. Herring, M.D.,
Columbus, Ohio

Dear Sir:

Your recent request for my opinion reads as follows:

"Under authority of Section 1261-20, of the Ohio General Code, the Athens City Health District and the Athens County General Health District, in 1939, effected a combination of the two health districts. The procedures prescribed by the above mentioned section were fully complied with. The contract entered into by the mayor of the City of Athens and the chairman of the District Advisory Council provided that the administration of public health affairs in the district should be taken over by the board of health of the Athens City Health District. This contract has been renewed from year to year and will be in effect until December 31, 1946.

Due to a misunderstanding, or other cause, the mayor of the City of Athens, in filling vacancies in the board of health of the city health district, has appointed two persons who are not residents of the City of Athens. It is also stated that these two appointments were never confirmed by the city council, as required by Section 4494 of the General Code. We shall be glad to have your opinion on the following questions:

1. In the appointment of members of the board of health of a city health district, has the mayor the authority to appoint, as such members, non-residents of the city health district?

2. What is the legal effect of failure of the mayor to submit the names of appointees of a city health district to the council for confirmation?"

Section 1261-16, General Code, provides:

"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 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." (Emphasis added.)

Section 1261-20, General Code, in so far as relevant to the questions you present, provides as follows:

“When it is proposed that a city health district unite with a general health district in the formation of a single district, the district advisory council of the general health district shall meet and vote on the question of union and it shall require a majority vote of the total number of townships and villages entitled to representation voting affirmatively to carry the question. The council or body performing the duties of council of the city shall likewise vote on the question and a majority voting affirmatively shall be required for approval. When the majority of the district advisory council and the council of the city have voted affirmatively, the chairman of the district advisory council and the mayor or chief executive of the city shall enter into a contract for the administration of health affairs in the combined district. 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; the contract may provide that the administration of the combined health district shall be taken over by either the board of health or health department of the city or by the board of health of the general health district and shall prescribe the date on which such change of administration shall be made. A copy of such contract shall be filed with the state director of health.

The combined health district hereinbefore provided for shall constitute a general health district, and the board of health or health department of the city or the board of health of the original health district as may be agreed in the contract, shall have within the combined district all the powers hereinafter granted to, and perform all the duties herein or hereafter required of the board of health of a general district.

If the contract shall provide that the administration of the combined health district shall be taken over by the board of health of the original general health district, upon the occurrence of the first vacancy in such board, whether by expiration of the term of a member or otherwise, the vacancy shall be filled by the election of a resident of the city health district. Such election shall be made by the district advisory council of the combined general health district, which shall consist of the members of the district advisory council of the original general health district and the mayor of the city constituting the city health district, each member having one vote; or the vacancy may be filled by the board of the original general health district, until an election shall be made by the district advisory council as hereinbefore provided. * * *”

(Emphasis added.)

It is thus seen that under the authority of the above quoted sections the combination of a city health district and a general health district results in one single general health district, and the board of health of such district, which, under the agreement, is to administer the affairs of such combined district, shall have all the powers and perform all the duties of a general health district.

In the instant case, the contract entered into by the Mayor of Athens and the Chairman of the District Advisory Council provides that the administration of the combined district should be taken over by the Board of Health of the Athens City Health District.

Section 4404, General Code, in so far as it is pertinent to your question, provides:

“ * * * the council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council * * *.”

The health of the inhabitants of a city and the sanitary condition existing in any one city of the state are of vast importance to all the people of the state. In dividing the state into health districts, the General Assembly authorized municipalities to establish and appoint boards of health as part of their local governments. This evidences a legislative intent to create in each city a health district which is to be a separate political subdivision of the state independent of the city with which it is coterminous. As such, the city health district becomes an agency of the state and is governed by the laws of the state. See *State, ex rel., v. Underwood*, 137 O. S., 1; 20 O. Jur., 540.

The Hughes Act, as amended by the Griswold Act (108 Ohio Laws,) became effective on January 2, 1920. These acts are now Section 4404, et seq., General Code, as to city health districts and Section 1261-16, et seq., General Code, as to general health districts. An examination of these sections discloses that provision is made for the establishment of both general and city boards of health by the local authorities, and, in case of failure of the local authorities to do so, the State Health Director, with the consent of the State Public Health Council, may appoint a health commissioner in lieu of such health boards. These statutes are of a general nature and apply throughout the state. The grant to a municipi-

pality of certain powers to be exercised for its public health is not a relinquishment of the state's health control and authority within the municipality's territorial limits.

It will be noted that nowhere in the law is there any provision restricting the appointment of members of city boards of health to residents of the particular city involved. This being so, it must be concluded that, since the city board of health is a distinct agency of the state government, separate from the municipality, and not subject to its jurisdiction as to matters provided for by state laws, your first question must be answered in the affirmative, i. e., a member of a city board of health need not be a resident of the city in which he serves as such member.

Nor would the fact that the district in question is one resulting from a combination of a city health district and a general health district alter such conclusion, since the sole effect of the consolidation under the agreement entered into is to cast additional powers and duties upon the city board of health, leaving it with all the statutory rights and duties it previously had.

In answer to your second question, I find that substantially this same question has been passed upon by one of my predecessors in office, with which opinion I am in complete accord. I refer to an opinion found in the Opinions of the Attorney General for 1924, Vol. I, page 333, the syllabus of which provides:

“Officers nominated by the mayor, whose names have never been submitted to the council for confirmation which are subsequently voted upon by the council and rejected, have no definite term of office, and it is not necessary to remove them by quo warranto before the mayor may nominate other officers.”

While it is not so indicated in the above quoted syllabus, this opinion deals with the appointment of members of a board of health.

Very frequently either constitutional or statutory provisions require appointments to public office or to certain designated offices to be approved or confirmed by some body other than the appointing authority. In 32 O. Jur., 914, it is stated:

“Where the appointing power can be exercised only by, and with the consent and approval of, the senate or other similar body, its exercise has no effect unless such consent or approval is given.”

To the same effect is a statement in 46 C. J., 953:

“Where the appointment is made as the result of a nomination by one authority and confirmation by another, the appointment is not complete until the action of all bodies concerned has been had; * * *.”

Therefore, in specific answer to your second question, it is my opinion that under the provisions of Section 4404, General Code, the appointment of members of a board of health of a combined general health district, the affairs of which are being administered by the board of health of a city health district, must be confirmed by the council of the city which forms a part of such combined health district.

Respectfully,

HUGH S. JENKINS,
Attorney General