

of the class of districts to which they are transferred, or to which they vote to join, or into which they are created by the action of the county board.

Specifically answering your questions, it is the opinion of this department that:

1. When a village district votes to join a contiguous rural district, it becomes a part of said rural district.

2. When all of a village school district is transferred to an adjoining rural district, the resulting district is a rural one.

3. When a rural school district is dissolved and joined to a contiguous village district, the resulting district is a village district.

4. When the county board creates a school district from a village and parts of other districts, it is a village school district.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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BOARD OF GENERAL HEALTH DISTRICT AND COUNTY AUDITOR  
MAY NOT PROCEED UNDER SECTION 1261-41 G. C. AS LONG AS  
THERE ARE SUFFICIENT FUNDS IN GENERAL HEALTH FUND  
TO COVER ALL ANTICIPATED EXPENSES.

COLUMBUS, OHIO, August 11, 1923.

HON. P. P. BOLI, *Prosecuting Attorney, Hamilton, Ohio.*

*SYLLABUS:*

*The board of a general health district and the county auditor may not proceed under section 1261-41 as long as there are sufficient funds in the general health fund to cover all anticipated expenses.*

DEAR SIR:—I am in receipt of your recent communication as follows:

“On June 8, 1923, the District Board of Health of Butler County, Ohio, found and declared that an epidemic existed throughout all of the subdivisions in the county, and that for the purpose of preventing the spread of disease, it was necessary to have the sum of \$1300.00 as additional funds to defray the expenses.

In compliance with section 1261-41 G. C., the board certified to the County Auditor the total estimate and the amount to be apportioned against each subdivision comprising the district.

Through the past two or three years there has been accumulating in the General Health Fund of the county a surplus of about \$5,000, which surplus has been permitted to remain in the fund by mistake or oversight, and is now still in the General Health Fund. This surplus comprises funds paid in from all of the subdivisions of the county.

We are aware of the duty of the county auditor to draw his warrant on the treasurer of each subdivision for the amount of the apportionment called for under the above certificate, but it is not the desire of the district health board to have the auditor draw warrants to cover the additional apportionments, so long as there remains this surplus in the General Health Fund available for the purpose.

"QUERY: If instead of the auditor drawing his warrants on the treasurer of each subdivision for the amount of said apportionments, can he permit part of the money held as surplus in the General Health Fund to be used to defray the additional necessary expenses brought on by the epidemic as certified to by the District Health Board?"

Section 1261-16 General Code of Ohio, which relates to the formation of health districts, 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."

Section 1261-40, General Code of Ohio, relates to the manner of providing a fund for health purposes and as far as pertinent provides:

"The board of health of a general health district shall annually, on or before the first Monday of April, estimate in itemized form the amounts needed for the current expenses of such districts for the fiscal year beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submitted to the budget commissioners which may reduce any item or items in such estimate but may not increase any item or the aggregate of all items. The aggregate amount as fixed by the budget commissioners shall be apportioned by the county auditor among the townships and municipalities composing the health district on the basis of taxable valuations in such townships and municipalities.

The district board of health shall certify to the county auditor the amount due from the state as its share of the salaries of the district health commissioner and public health nurse and clerk, if employed, for the next fiscal year which shall be deducted from the total of such estimate before an apportionment is made. The county auditor, when making his semi-annual apportionment of funds shall retain at each semi-annual apportionment one-half the amount so apportioned to each township and municipality. Such moneys shall be placed in a separate fund, to be known as the 'district health fund'."

Section 1261-38, General Code of Ohio, provides as follows:

"The treasurer of a city which constitutes a health district shall be the custodian of the health fund of such city health district. The county

treasurer of a county which constitutes all or the major portion of a general health district shall be the custodian of the health fund of that health district. The auditor of a county which constitutes all or a major portion of a general health district shall act as the auditor of the general health district. The auditor of a city which constitutes a city health district shall act as the auditor of a city health district. Expenses of the district board of health of a general health district shall be paid on the warrant of the county auditor issued on vouchers approved by the district board of health and signed by the district health commissioner. Expenses of a board of health or health department of a city health district shall be paid on the warrant of the auditor of the city issued on vouchers approved by the board of health or health department of a city health district and signed by the city health commissioner."

The above sections 1261-38 and 1261-40 provide for a fund to be known as "district health fund" and provide that the county treasurer shall be the custodian and the county auditor the auditor of such fund. It is further provided that the expenses of the district board of health shall be paid from that fund on the warrant of the county auditor, issued on the voucher approved by the district board of health and signed by the district health commissioner.

This fund is not a county fund and the county treasurer and county auditor have no control over the expenditure of same when a voucher properly approved and signed is drawn on funds by the district board of health.

Section 1261-41 provides:

"In case of epidemic or threatened epidemic or during the unusual prevalence of a dangerous communicable disease, if the moneys in the district health fund of a general health district are not sufficient, in the judgment of the board of health of such district, to defray the expenses necessary to prevent the spread of such disease, such board of health shall estimate the amount required for such purpose and apportion it among the townships and municipalities in which the condition herein described exists, on the basis provided for in section 25 of this act. Such estimate and apportionment shall be certified to the county auditor of the proper county or counties, who shall draw an order on the clerk, auditor or other similar officer of each township or municipality affected thereby, for the amount to it apportioned. \* \* \* \* \*"

This section specifically states that it is an emergency measure to be used when the funds of a general health district are not sufficient to take care of an epidemic or a threatened epidemic.

You state in your communication that there is a \$5,000 surplus in the district health fund at this time which is available to take care of a possible epidemic.

I can find no statutory authority for the accumulation of a surplus in the district health fund.

It is therefore my opinion that the board of the general health district and the county auditor may not proceed under section 1261-41 as long as there are sufficient funds in the general health fund to cover all anticipated expenses.

Respectfully,

C. C. CRABBE,  
*Attorney General.*