

Note from the Attorney General's Office:

1991 Op. Att'y Gen. No. 91-015 was overruled
as a result of legislative enactment
by 2018 Op. Att'y Gen. No. 2018-013.

OPINION NO. 91-015**Syllabus:**

A board of health of a combined general health district created under R.C. 3709.07 has no authority to acquire real property or to borrow money or enter into a lease-purchase agreement in order to provide office space for the health district. (1983 Op. Att'y Gen. No. 83-081, syllabus, paragraphs one and two, approved and followed.)

To: Richard G. Ward, Ross County Prosecuting Attorney, Chillicothe, Ohio
By: Lee Fisher, Attorney General, March 12, 1991

I have before me your opinion request concerning the authority of a combined general health district to borrow money or enter a lease-purchase agreement for the purpose of providing office space for the district. You specifically ask:

1. May a combined general health district, created by the union of a city health district and a general health district, acquire title to real estate for the purpose of providing office space for the district?

2. May a combined general health district, created by the union of a city health district and a general health district, borrow money to acquire real estate or enter a lease/purchase agreement to acquire real estate for the purpose of providing office space for the district?

R.C. 3709.07 provides for the union of a city health district and a general health district into a single district pursuant to contract for the administration of health matters in the combined district.¹ Pursuant to R.C. 3709.07:

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 or cities and by the original general health district. The contract may provide that the administration of the combined district shall be taken over by either the board of health or health department of one of the cities, by the board of health of the general health district, or by a combined board of health....

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

Thus, the health district about which you ask constitutes a general health district. Further, its board of health has all the powers and duties of a board of health of a general health district.

It is well settled that creatures of statute, such as general health districts, have only those powers expressly granted by statute and those powers necessarily implied to carry out their express powers and duties. *See, e.g., Brunner v. Rhodes*, 95 Ohio App. 259, 119 N.E.2d 105 (Franklin County 1953); 1989 Op. Att'y Gen. No. 89-032. No statute of which I am aware authorizes a board of health of a general health district to acquire title to real property for the purpose of providing office space for the district.² *Cf.* R.C. 308.06(G) (empowering a regional airport authority to "acquire, construct, lease, operate, maintain, or manage airports and airport facilities"); R.C. 511.11 (empowering a board of township trustees to "acquire by purchase, appropriation, or otherwise, any private or public lands which it might deem necessary for its use"); R.C. 3313.37(B)(2) (empowering certain school districts to "acquire land by gift or devise, by purchase, or by appropriation"). Since the legislature has expressly empowered entities other than general health districts to acquire facilities or property needed to carry out their functions, I must conclude

¹ R.C. 3709.071 also provides for the combination of one or more city health districts and a general health district into a single general health district, upon approval of the electors. The resulting general health district is administered pursuant to a contract which is similar to that described in R.C. 3709.07. Since you have not stated that the health district about which you ask was formed under R.C. 3709.071, I will assume, for purposes of discussion, that you are concerned with a general health district established under R.C. 3709.07.

² I note that there is one method by which the board of health of a combined general health district, created under R.C. 3709.07, may become the owner of real property. In 1989 Op. Att'y Gen. No. 89-032, my predecessor concluded that the board of health of a combined general health district is empowered "to receive by gift, devise, or bequest moneys, lands, or other properties, for the benefit of the board, and to hold and apply the properties according to the terms of the gift devise, or bequest." Op. No. 89-032 (syllabus, paragraph two). This power is derived from the power to accept gifts and does not constitute general authority for a board of health to acquire real property in order to provide office space for the health district.

that, in the absence of a statute empowering a general health district to acquire real property for use as office space, the legislature intended the district to have no such authority.

I note, however, as stated in Op. No. 89-032 at 2-133: "It has...long been established that a board of health may, as an incidental power, acquire and hold such property as is necessary to the performance of its statutory duties." *See, e.g.*, 1959 Op. Att'y Gen. No. 935, p. 639 (finding implied authority for a board of health of a general health district to provide automobiles); 1925 Op. Att'y Gen. No. 2995, p. 761 (syllabus). With respect to the provision of office space for a health district, however, the legislature made specific provision in R.C. 3709.34, which states: "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." In discussing the means by which a combined general health district could provide for the furnishing of office space, my predecessor concluded in 1983 Op. Att'y Gen. No. 83-081 (syllabus, paragraphs one and two):

1. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a municipality may, but is not required to, furnish office space for a combined general health district formed under R.C. 3709.07.
2. If office space is not furnished to a combined general health district under R.C. 3709.34, the expense of securing such office space is an operating expense of the district and must be apportioned in the same manner as other such expenses are apportioned in the contract creating such district. (1954 Op. Att'y Gen. No. 3499, p. 47 and 1976 Op. Att'y Gen. No. 76-066, approved and followed.)

As noted in the opinion, the parties to the contract entered into under R.C. 3709.07 may alter or amend the contract or may contract further to clarify the matter of providing suitable quarters for the health district. *See generally* 1976 Op. Att'y Gen. No. 76-066 (syllabus). By statute, however, a combined general health district is limited to the two methods specified above in providing office space for the district.

Your second question specifically asks whether the board of health of a combined general health district may borrow money or enter into a lease-purchase agreement to acquire real estate for the purpose of providing office space for the district. Since no express statutory authority exists for the board to enter into either such arrangement for the provision of office space for the district, and in light of the legislature's having expressly provided other means for furnishing such office space, I must conclude that a board of health of a combined general health district is without authority to borrow money or enter into a lease-purchase agreement for the provision of office space for the district.

Based on the foregoing, it is my opinion, and you are hereby advised, that a board of health of a combined general health district created under R.C. 3709.07 has no authority to acquire real property or to borrow money or enter into a lease-purchase agreement in order to provide office space for the health district. (1983 Op. Att'y Gen. No. 83-081, syllabus, paragraphs one and two, approved and followed.)