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HEALTH, BOARD OF—GENERAL HEALTH DISTRICT—CERTIFIED ESTIMATE OF AMOUNTS NEEDED FOR CURRENT EXPENSES TO COUNTY AUDITOR—FAILURE OF HEALTH DISTRICT TO FILE WITH MUNICIPALITIES OR TOWNSHIPS ESTIMATE OF CONTEMPLATED REVENUES AND EXPENSES OR REFUSAL OF MUNICIPALITIES OR TOWNSHIPS TO PROPERLY INCLUDE AMOUNTS IN BUDGETS—DUTY OF COUNTY AUDITOR NOT AFFECTED—HE MUST MAKE SEMI-ANNUAL APPORTIONMENT OF FUNDS AND RETAIN ONE-HALF THE AMOUNT APPORTIONED AND PLACE MONIES IN DISTRICT HEALTH FUND—SECTIONS 1261-40, 5625-20 G. C.

SYLLABUS:

Where the board of health of a general health district, in compliance with the provisions of Section 1261-40, General Code, has certified its estimate of the amounts needed for current expenses for the ensuing year to the county auditor, the aggregate of all such items has been approved by the budget commissioners and the aggregate amount as fixed by the budget commissioners has been apportioned by the county auditor among the townships and municipalities composing such health district within such time as to permit such townships and municipalities to include the amounts so apportioned within their respective budgets, the failure of such health district to file directly with such municipalities or townships, under Section 5625-20, General Code, an estimate of contemplated revenues and expenses for the ensuing fiscal year or the refusal of such municipalities or townships to include such apportioned amounts in their respective budgets does not affect the duty of the county auditor, under Section 1261-40, General Code, in making his semi-annual apportionment of funds, to retain one-half the amount so apportioned and to place such monies in the district health fund.

Columbus, Ohio, November 16, 1951

Hon. J. L. MacDonald, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I would appreciate your official opinion on the following questions involving the application of Sections 1261-40, 5625-5 and 5625-20 of the General Code of Ohio.

"Where the board of health of a general health district in conformity with Section 1261-40 G. C. certifies to the county auditor its estimate of the amounts needed for the current

expenses of the district for the next ensuing fiscal year; and where the estimate is submitted to the budget commissioners and the aggregate amount as fixed by said budget commissioners is apportioned by the county auditor among the townships and municipalities composing the district; but where the board of health fails to file with the taxing authority of a township, in accordance with Section 5625-20 G. C., a request for the amount apportioned by the county auditor and in consequence thereof the taxing authority of the township does not include in its budget of expenditures any amount for the operation of the health district; under the above circumstances does the county auditor, when making his semi-annual apportionment of funds due said township, have the authority to retain one half the amount apportioned by him as the share of said township for the benefit of the health district?

"Under the same set of circumstances as above; but where the board of health files with the taxing authority of a township; in compliance with Section 5625-20 G. C., a request for the amount apportioned by the county auditor; and where the taxing authority of the township refuses to include in its budget of expenditures the amount apportioned and requested for the operation of the health district; does the county auditor then have the authority to retain one-half the amount apportioned by him as the share of said township for the benefit of the health district, when making his semi-annual apportionment of funds due said township?

"In considering the above questions, I have read Opinions of the Attorney General of Ohio No. 2837 for 1925 and No. 132 for 1933. However these opinions seem to me to be conflicting."

Section 1261-40, General Code, was originally enacted as a part of the Griswold Act in 1919, which first established health districts. The present statute, in so far as is pertinent, reads:

"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 for the next fiscal year as provided in section 1261-39 of the General Code, 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 monies shall be placed in a separate fund, to be known as the 'district health fund.' * * *"

Sections 5625-5 and 5625-20, General Code, were originally enacted in 1927 as a part of the Uniform Tax Levy Law, sometimes referred to as the "budget law." These sections, in so far as pertinent, read as follows:

Section 5625-5, General Code:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, * * *. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary * * * for boards and commissioners of health, and other special or district appropriating authorities deriving their revenue in whole or part from the subdivision; * * *."

Section 5625-20, General Code:

"On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board or commission, and each district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority thereof, or in the case of a municipality with its chief executive officer, before the first of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision or by the bureau. The taxing authority shall include in its budget of expenditures the full amounts requested therefrom by district authorities, not to exceed the amount authorized by the law applicable thereto, if such law gives such authorities the right to fix the amount of revenue they are to receive from the subdivision. * * *"

The constitutionality of the Griswold Act was upheld by the Supreme Court in State, ex rel. Village of Cuyahoga Heights v. Zangerle, 103 Ohio St., 566, 1921, to the extent that such Act required the county auditor, in retaining the pro rata amount apportioned to each township or municipality for health purposes, to do so from the general fund and the subdivision's public health fund. The court pointed out that the Griswold Act did not provide for the levy of taxes but, instead, provided for their disposition

and apportionment and the creation of a separate fund to be known as the "district health fund."

The syllabus of Opinion No. 2837, Opinions of the Attorney General for 1925, page 646, referred to in your request, reads as follows:

> "Where a township or municipality fails to make a levy for health purposes and the levy asked for, for the general fund is not sufficient to care for the apportionment of the estimate allowed the general health district by the budget commission then the county auditor should make a levy sufficient to care for such apportionment."

It, of course, will be noted that the Zangerle case, supra, and the 1925 opinion preceded the passage of the Uniform Tax Levy Law in 1927. The effect of the passage of such tax levy law in its relation to health districts was first considered by the Attorney General in Opinion No. 132, Opinions of the Attorney General for 1933, page 149, also referred to in your request. From an examination of that opinion, it appears that the board of health had failed to submit its estimated budget to the county auditor on or before the first Monday of April, 1932 for the fiscal year next ensuing, as provided by Section 1261-40, General Code. Instead, the board of health passed its annual appropriation resolution on January 6, 1933, asking for $6,000, which budget was approved by the budget commissioners on January 10, 1933 in the amount of $3,000. Under such a factual situation, the taxing authorities of the various subdivisions and municipalities had no opportunity, before the 30th day of June, to determine the amount required from them for the operation of such board of health and so could not include that amount in their budgets which were filed with the county auditor on or before the 20th day of July. The syllabus of such opinion reads as follows:

> "A county auditor has no authority under Section 1261-40, General Code, to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities."

It should be noted that the above quoted syllabus employed rather sweeping language to the general effect that the county auditor had no authority to withhold tax moneys for the district health fund at any semi-annual tax settlement when "no provisions for such items have been

included in the annual tax budgets adopted by such townships and municipalities."

In so far as the syllabus therein is read in connection with the facts there presented, I am in complete agreement. However, I do not believe that this opinion can be interpreted as standing for the broad proposition that such townships or municipalities may refuse to include the amounts necessary, as approved by the budget commissioners, for the operation of such board of health in their budgets where such amounts are known to such townships or municipalities. That the then Attorney General did not intend such opinion to be so construed is apparent from another opinion dealing with a related question by the same Attorney General the same year. In Opinion No. 1545, Opinions of the Attorney General for 1933, page 1389, it was held that Sections 1261-40, 5625-5 and 5625-20, General Code, are in pari materia and must be construed together in such manner as to give effect to the provisions of each. I quote from that opinion:

> "It would appear to be a reasonable interpretation of such sections if Sections 1261-40, 5625-5 and 5625-20, General Code, were construed to require the board of health of a general health district to certify on or before the first Monday in April of each year, its estimated budget for the next ensuing year, to the county auditor, who submits such estimate to the budget commissioners. Upon approval of the budget by the budget commission the county auditor is then required to allocate such approved budget among the various taxing subdivisions comprising such general health district for inclusion in their tax budgets along with other items comprising the item for current expenses filed with the budget commission on or before July 15th; then the county auditor, when making his semi-annual apportionment of funds shall retain a sum equal to one-half the amount so apportioned to a particular subdivision from the funds collected for the purposes of the general operating fund of such subdivision. If such is a reasonable construction of the language of such sections, it will permit each of such sections to remain effective, and comply with the rules of interpretation of statutes as hereinbefore set forth.
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> "The language of Sections 1261-40, 5625-5 and 5625-20, General Code, when so construed, does not contemplate a levy of tax for the particular purpose of a general health district, but rather makes it a part of the levy of the subdivision for the general operating fund of the subdivision. The provision of Section 1261-40, General Code, is specific that one-half of the amount shall be deducted by the county auditor when making his semi-annual apportionment of taxes to taxing subdivisions. * * *"

The above quoted language was cited with approval by another Attorney General in Opinion No. 1210, Opinions of the Attorney General for 1946, page 698. I am fully in agreement with this interpretation. Since no reference is made in this interpretation to the provisions of Section 5625-20, General Code, to the effect that each district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority thereof before the first day of June of each year an estimate of contemplated revenue and expenditures for the ensuing fiscal year, it would appear that my predecessors, in construing these statutes in pari materia, have considered this provision of Section 5625-20 to be merely directory and not mandatory.

It must be recognized that the Griswold Act created district boards of health as legal entities, separate and apart from the municipalities or townships included therein, and provided for the financing of these newly created entities in part from the general tax levies of such municipalities and townships. It made the budget commissioners the final authority as to the amount to be received by such boards of health and did not permit municipalities or townships to exercise any discretion whatsoever as to such matter. To construe the later enacted provisions of Sections 5625-5 and 5625-20 as vesting in the municipalities and townships the life and death power over such health districts by the simple process of refusing to include the request of the health district in the budget of such municipalities or townships would amount to a repeal of the very cornerstone of the Griswold Act. It is fundamental that repeals by implication are not favored in law and are avoided unless it is impossible, by any application of logic, to reconcile seemingly inconsistent statutes.

We must further recognize that the Uniform Tax Levy Law is of general application and does not deal, in any detail, with health districts as such. It would appear obvious that the purpose of the provisions of Section 5625-20, General Code, to the effect that departments, boards, commissions and district authorities entitled to participate should file with the township or municipality an estimate of contemplated revenue and expenditures for the ensuing fiscal year, is to inform such municipality or township of the lawful needs of the various departments, boards, commissions and district authorities so that such may be intelligently incorporated into the budget of the municipality and township. In the case of a general health district, its aggregate needs are known to it and, in the first instance, determined by it, but its need from the individual township

or municipality, and more particularly its right to receive a portion of the tax receipts of such township or municipality, can only be determined by the prior action of the budget commissioners in approving their aggregate budget and the action of the county auditor in apportioning such among the various municipalities and townships composing the health district on the basis of taxable valuations in such townships and municipalities in accordance with Section 1261-40, General Code. When the budget commissioners, in accordance with Section 1261-40, General Code, have approved the budget of the health district in the aggregate and the county auditor has apportioned such among the municipalities and townships, it would appear that such municipalities and townships are fully informed as to the lawful amount which the health district is entitled to receive from the local taxes of such subdivision. Upon the occurrence of such events, in so far as a health district is concerned, the municipalities and townships have all the information which they require in order to prepare an intelligent budget of their own.

I conclude, therefore, that as to general health districts, the language of Section 5625-20, General Code, with reference to the filing of an estimate of contemplated revenue and expenditures of the ensuing fiscal year with a municipality and township before the first of June of each year is, at most, directory and not mandatory. To further illustrate this point, let us suppose that a general health district has certified its estimate of the amounts needed for current expenses for the fiscal year beginning on the first day of January next ensuing to the county auditor, in compliance with Section 1261-40, General Code. Let us further suppose that the budget commissioners, in accordance with the power vested in them by said section, reduced various items therein, resulting in their approval of a reduced budget, and that the county auditor then apportions the aggregate amount so fixed among the townships and municipalities. Subsequent thereto the health district submits the original budget, not reduced, to the various municipalities and townships. May we say that in such event the municipalities and townships must include the full amount of such request in their budgets for a second submission to the budget commission? I believe it is obvious that the municipalities and townships would be required to include in their budgets only that amount previously apportioned to them by the county auditor, based upon an approved budget by the county budget commission. Thus, in the last analysis, the amount to be included in the budgets of the municipalities and townships is based on

the aggregate amount approved by the budget commissioners and apportioned by the county auditor and is not based upon the amount formally requested directly of the municipalities and townships by the health district.

It would appear that the very act of apportionment by the county auditor after the aggregate amount is approved by the budget commissioners, who are the authorities having the right to fix the amount of revenue the health district is to receive from the subdivision, would constitute, on behalf of such health district, the notification of the municipalities and townships of the amounts which Section 5625-20, General Code, requires them to include in their respective budgets.

It, therefore, is my opinion that where the board of health of a general health district, in compliance with the provisions of Section 1261-40, General Code, has certified its estimate of the amounts needed for current expenses for the ensuing year to the county auditor, the aggregate of all such items has been approved by the budget commissioners and the aggregate amount as fixed by the budget commissioner has been apportioned by the county auditor among the townships and municipalities composing such health district within such time as to permit such townships and municipalities to include the amounts so apportioned within their respective budgets, the failure of such health district to file directly with such municipalities or townships, under Section 5625-20, General Code, an estimate of contemplated revenues and expenses for the ensuing fiscal year or the refusal of such municipalities or townships to include such apportioned amounts in their respective budgets does not affect the duty of the county auditor, under Section 1261-40, General Code, in making his semi-annual apportionment of funds, to retain one-half the amount so apportioned and to place such moneys in the district health fund.

Respectfully,

C. WILLIAM O'NEILL
Attorney General