

1250.

COUNTY BUDGET COMMISSION—POWER TO DECREASE COMPENSATION TO BE PAID TO HEALTH COMMISSIONER BY DISTRICT BOARD.

*SYLLABUS:*

*A budget commission may reduce the amount requested by the general health district board for the compensation of a health commissioner so long as such action does not amount to an abuse of discretion.*

COLUMBUS, OHIO, December 3, 1929.

HON. CHARLES A. NEAL, *Director of Health, Columbus, Ohio.*

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

“Section 1261-19 of the General Code provides in part as follows:

‘The district board of health shall appoint a district health commissioner upon such terms, and for such period of time not exceeding two years, as may be prescribed by the district board. Said appointee shall be a licensed physician and shall be secretary of the board and shall devote such time to the duties of his office as may be fixed by contract with the district board of health.’

In all the counties of the state, with the exception of Jackson and Vinton, health commissioners have been appointed by the district board of health, and the terms of their employment, including amount of compensation to be received, have been fixed by contract.

The question now arises as to the authority of the county budget commission to decrease the amount of compensation to be paid to the health commissioner in the authority given in Section 1261-40, which provides in part:

‘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.’

In most of the counties, boards of health have appointed their health commissioners and contracts have been entered into for a period of two years, the limit allowed by law. Presumably the contract first entered into is in accordance with the budget as approved. The question is, has the budget commission the authority to over-ride the power of the board of health fixing the compensation of a health commissioner by reducing the item in the budget for the health commissioner’s compensation.”

Section 1261-40, which you quote, in clear and unambiguous language expressly provides that the budget commissioners “may reduce any item or items in such estimate”. The estimate referred to, of course, is the amount needed for the current expenses of such district for the fiscal year beginning on the first day of January next ensuing.

Clearly, it is the duty of the board of a general health district to estimate in itemized form amounts needed for current expenses which necessarily include funds needed for personal services.

In connection with your inquiry an examination has been made of the so-called budget law as enacted by the 87th General Assembly in House Bill No. 80, 112 Ohio Laws, 391. Without undertaking to review the many provisions of the act, it may be stated that in so far as the power of the budget commission is concerned with reference to your question there is nothing in said law which is inconsistent with the provisions of Section 1261-40.

Paragraph (j) of Section 5625-1, General Code, as amended by the 88th General Assembly, provides:

“‘District authority’ shall mean each board of directors, trustees, commissioners or other officers controlling a district institution or activity which derives its income or funds from two or more subdivisions, such as the county school board, trustees of district tuberculosis hospitals and district children’s homes, district board of health and other boards.”

Section 5625-20, General Code, provides:

“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 law applicable thereto, if such law gives such authorities the right to fix the amount of revenue they are to receive from the subdivision. In a city in which a special levy for a municipal university has been authorized to be levied outside of the fifteen mill limitation, or is required by the charter of the municipality, the taxing authority shall include an amount not less than the estimated yield of such levy, if such amount be requested by the board of directors of the municipal university.”

Obviously the first sentence of the section last quoted does not refer to the general health district for the reason that under the definition as given in paragraph (j) of Section 5625-1 such a health district is a “district authority” and not a “taxing authority” as defined in the act. It is further clear that the townships and villages which constitute a general health district must make the levies that are to provide the funds for such district. It therefore seems that under the provisions of Section 1261-40 read in connection with the budget law, the general health district does not submit a budget in a technical sense, but rather submits a request to the budget commission in itemized form, and when the said commission has acted thereon the health district then certifies to the “taxing authorities” composing the district the amount that is to be included in their respective budgets for health purposes.

It could well be argued that in view of the new budget law, Section 1261-40 is no longer in effect. However, repeals by implication are not favored and the two provisions may be harmonized by following the procedure above indicated.

Section 5625-21, General Code, outlines what such budget shall present in the way of information. One of the things that such budget shall state is:

"A statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expense, and the fund or funds from which such expenditures are to be made. This estimate may include a contingent expense not designated for any particular purpose, and not to exceed three per cent of the total amount of appropriations for current expense."

Section 5625-23 provides that the county auditor shall present the budget submitted to him by the subdivisions to the budget commission together with an estimate to be presented by him as set forth in the act. There are certain levies provided for which said sections require the budget commission to approve without modification. However, examination of such levies as set forth in the section indicates that the one you have under consideration is not included therein.

Section 5625-24, General Code, provides:

"The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom."

From the foregoing it seems clear that there is nothing in the so-called budget law as it now exists which is inconsistent with the provisions of Section 1261-40, with reference to the power of said commission to reduce the amounts requested for health purposes. On the other hand, it seems that the provisions of Section 1261-40 are in harmony with the provisions of the present scheme of taxation with reference to the powers of the budget commission.

Whether the amounts requested for health purposes are presented by the health district to the budget commission or are included in the budget by the taxing authority, the result is the same, because under either procedure such commission has power to adjust any items so as to bring them within the proper limitation provided by law. There is no doubt, of course, but that the levy for personal services for the general health district is subject to the fifteen mill limitation.

You are therefore specifically advised that in my opinion the budget commission may reduce the amount requested by the general health district board for the compensation of a health commissioner so long as such action does not amount to an abuse of discretion.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*