

from the county board of education fund and is usually in that fund at the time that contracts are made with speakers and instructors for the institute. The cost outside of this item in conducting a teachers' institute is quite small. The teachers' institute to be held during the vacation period ought not to fail because of the dereliction of the members of the county board of education in not passing a certain resolution prior to a specific date.

You are therefore advised that the provision appearing in section 7868 G. C., that the county board of education shall decide by formal resolution, prior to February 1st, whether a county institute shall be held in the county during the current year, is directory only and if such resolution was passed after the first of February by the county board of education and a teachers' institute thereafter held in that county during the current year, the expenses of such teachers' institute could be legally paid from the county board of education fund.

Very respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3753.

VILLAGES—WITHOUT AUTHORITY TO ELECT HEALTH OFFICER  
 UNDER CHARTER TO ENFORCE STATE HEALTH REGULATIONS.

*A health officer elected under a village charter providing therefor is without legal right to act in the enforcing of state health regulations, as such provision would be in conflict with the general law.*

COLUMBUS, OHIO, November 25, 1922.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your request of recent date for an opinion received, in which you quote a letter received by you from the village solicitor of Cuyahoga Heights, Ohio. The answer to your inquiry is based on the solicitor's letter, which is as follows:

“Sometime ago, about December 15th, the village of Cuyahoga Heights had before the Supreme Court of Ohio, the question as to whether the Hughes and Griswold laws were constitutional; the Supreme Court held that they were, and that the village even by the adoption of a charter form of government was not in a position to form its own health regulations. Our health officer insists that by reason of a provision of the charter that provides for the election of a health officer, he may hold office and draw his salary for his services. Please advise me if he has a legal right to act as health officer?”

The sections of the General Code pertinent to the question at hand are as follows:

“Sec. 1261-16. 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."

"Sec. 1261-18. Within sixty days after this act shall take effect the mayor of each municipality not constituting a city health district and the chairman of the trustees of each township in a general health district shall meet at the county seat and shall organize by selecting a chairman and a secretary. Such organization shall be known as the district advisory council. The district advisory council shall proceed to select and appoint a district board of health as hereinbefore provided, having due regard to the equal representation of all parts of the district. Where the population of any municipality represented on such district advisory council exceeds one-fifth of the total population of the district, as determined by the last preceding federal census such municipality shall be entitled to one representative on the district board of health for each fifth of the population of such municipality. Of the members of the district board of health, one shall be a physician. Annually thereafter the district advisory council shall meet on the first Monday in May for the purpose of electing its officers and a member of the district board of health and shall also receive and consider the annual or special reports of the district board of health and make recommendation to the district board of health or to the state department of health in regard to matters for the betterment of health and sanitation within the district or for needed legislation. It shall be the duty of the secretary of the district advisory council to notify the district health commissioner and the state commissioner of health of the proceedings of such meeting. Special meeting of the district advisory council shall be held on request of the district board of health or on the order of the state commissioner of health. On certification of the chairman and secretary the necessary expenses of each delegate to an annual or special meeting shall be paid by the village or township he represents. The district health commissioner shall attend all meetings of the district advisory council."

"Sec. 1261-19. Within thirty days after the appointment of the members of the district board of health in a general health district, they shall organize by selecting one of the members as president and another member as president pro tempore. 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. Notice of such appointment shall be filed with the State Commissioner of Health. The district health commissioner shall be the executive officer of the district board of health and shall carry out all orders of the district board of health and of the state department of health. He shall be charged with the enforcement of

all sanitary laws and regulations in the district, and shall have within the general health district all the powers now conferred by law upon health officers of municipalities. It shall be the duty of the district health commissioner to keep the public informed in regard to all matters affecting the health of the district."

"Sec. 1261-26. In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and other charitable, benevolent, correctional institutions. The district board of health may also provide for the inspection of dairies, stores, restaurants, hotels and other places where food is manufactured, handled, stored, sold or offered for sale, and for the medical inspection of persons employed therein. The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent diseases.

Provided that in the medical supervision of school children as herein provided, no medical or surgical treatment shall be administered to any minor school child except upon the written request of a parent or guardian of such child; and provided further, that any information regarding any diseased condition or defect found as a result of any medical school examination shall be communicated only to the parent or guardian of such child and if in writing shall be in a sealed envelope addressed to such parent or guardian."

"Sec. 1261-30. The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act. The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

In the case of the *Village of Cuyahoga Heights vs. John A. Zangerle*, wherein the health law of the state of Ohio was under consideration, referred to in your communication, Johnson, J., delivering the opinion of the court, says as follows:

"The whole scheme of the legislation under examination is regulatory in its nature and was passed in the exercise of the police power. The necessity for classification in regulatory legislation in order that it may be definite and efficient to accomplish its object has long been recognized."

In the case of *Fitzgerald vs. Cleveland*, 88 O. S., 359, the opinion speaks as follows:

"The general laws (as used in sec. 3, Art. XVIII of the Constitution of Ohio) referred to are obviously such as relate to police, sanitary and

other similar regulations, and which apply uniformly throughout the state. They involve the concern of the state for the peace, health and safety of all of its people, wholly separate and distinct from, and without reference to, any of its political subdivisions."

The home rule amendment of the constitution (Article XVIII, section 3) is as follows:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Attention is directed to General Code section 4404, which is as follows:

"The council of each city constituting a health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act contained shall be construed as interfering with the authority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided."

It will be noticed on a reading of this section that the same does not apply to the instant case for the reason that the village of Cuyahoga Heights is not a municipality constituting a municipal health district.

It is apparent that the state is fully aware of the importance of health protection and the General Assembly has passed laws of general application for the regulating thereof. It has divided the state into districts, provided officers therefor and prescribed the duties to be performed by said officers. No authority for the performance of such duties is conferred on any other. For this reason it is believed that a law or ordinance passed for the purpose of employing someone other than as designated by the general law for the performance of the duties described by such general law, is void as being in conflict therewith.

The state wishes to know the competency of its guardians of health and has not seen fit to leave the selection of same to each political subdivision.

In answer to your question you are therefore advised that it is the opinion of this department that the health officer elected by the Village of Cuyahoga Heights under its charter provision has no legal right to act.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*