

*agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, and to employ engineering, architectural and construction experts and inspectors and attorneys, and such other employes as may be necessary in its judgment, and fix their compensation, all of whom shall do such work as such commission shall direct. * * **
 (Italics the writer's.)

Your attention is directed to the italicized portion wherein it is stated that the Commission has the authority to make all contracts and agreements "necessary or incidental to the performance of its duties and the execution of its powers." The language is, it will be noted, very broad and appears to be intended to give to the Commission the general powers to conduct the operation of a bridge in the same manner as would be possessed by a private body conducting a similar enterprise. It is a matter of common knowledge that in an enterprise of this nature, it is desirable that attendants be in uniform so that the traveling public can easily ascertain the proper persons to whom toll shall be paid.

It is, therefore, my opinion that the State Bridge Commission has the authority to expend its funds for the purchase of uniforms for attendants.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3502.

PUBLIC EMPLOYES RETIREMENT SYSTEM—EMPLOYES' ACCUMULATION FUND—CITY HEALTH DISTRICT—GENERAL HEALTH DISTRICT—MUNICIPALITY—TOWNSHIP — COUNCIL — TAXING AUTHORITY — COUNTY AUDITOR MUST FOLLOW PROVISIONS OF SECTION 1261-40 G. C. PRO RATA SHARE—MANDATORY DUTY.

SYLLABUS:

By virtue of the provisions of Section 486-33, General Code, a mandatory duty is imposed upon each city health district and each general health district to pay the employer's contribution to the Employers' Accumulation Fund for its own health employes that are members of the Public Employes Retirement System.

By virtue of the provisions of Section 1261-38, General Code, the rates of contribution must be certified by the Public Employes Retirement

Board to the county auditor for the general health district and to the city auditor for the city health district before December first of each year.

Prior to June first, the Public Employes Retirement Board must submit to the executive head of the city health district an itemized statement of the amount necessary to pay the contribution of the city health district to the Employes' Accumulation Fund during the year beginning January first of the following year. The amount so certified to it by the Public Employes Retirement Board must be included in the list of expenditures for the ensuing fiscal year prepared by the board of health of the city health district and filed with the mayor before the first day of June of each year, and thereafter included in the budget prepared by the council for the municipality.

Prior to the first Monday of April, the Public Employes Retirement Board must submit to the executive head of the general health district an itemized statement of the amount necessary to pay the contribution of the general health district to the Employers' Accumulation Fund during the year beginning January first of the following year. The amount so certified by the Public Employes Retirement Board must be included in the itemized estimate of expenditures for the fiscal year beginning on the first day of January next ensuing, prepared and filed by the board of health of the general health district with the county auditor on or before the first Monday of April. After the approval of the estimate by the county commissioners, in accordance with the provisions of Section 1261-40, General Code, the county auditor must apportion among the various townships and municipalities that comprise the general health district, the pro rata share due to the Employes Accumulation Fund from each municipality and township, and thereafter such amount must be included in the estimate of expenditures that each township must prepare and file with the township trustees and each municipality must prepare and file with its mayor.

On or before the fifteenth day of July the township trustees as the taxing authority for the township and the council as the taxing authority for the municipality must include such amounts in its annual budget for the year beginning January first of the following year.

COLUMBUS, OHIO, January 5, 1939.

DR. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR DR. HARTUNG: This will acknowledge receipt of your recent communication which reads as follows:

"Will you please give me an opinion as to the method in which the employers' share towards the public employees' retirement shall apply to the local district boards of health?"

Will it be necessary for the boards of health to provide in their annual budgets for an employers' accumulation fund, or is this fund to be raised from the general fund of the county?"

For the purposes of local health administration, Section 1261-16, General Code, provides for the creation of city health districts in each city and general health district comprising all the townships and villages of each county, and makes provision for the union of a city and a general health district and two or more general health districts.

Section 1261-22, General Code, provides for the appointment of a clerk, nurses, physicians and others by the board of health of any general health district.

Section 4408, General Code, provides for the appointment of a health commissioner, clerks, physicians and other persons by the board of health of any city health district.

Section 1261-20, General Code, provides that in the case of the union of a city health district with a general health district, a contract shall be entered into, providing for the proportion of the expenses to be paid by the city and by that part of the district lying outside of the city.

Section 1261-39, General Code, provides that if a general or city health district has complied with certain orders and regulations of the State Department of Health, there shall be paid from the general revenue fund to the general or city health district an amount equal to one-half of the amount paid by the district board of health to its health commissioner, nurse and clerk during the preceding semi-annual period.

In Opinion No. 1328, rendered by me on October 19, 1937, I held as follows:

"District health commissioners, public health nurses, and clerks of general or city health districts which receive state funds pursuant to appropriation by the General Assembly in accordance with and under the circumstances provided by Section 1261-39, General Code, are 'state employes' within the meaning of the term as used in the State Employes' Retirement Act during such years as such districts receive state aid."

However, by amendment effective June 14, 1938, the State Employes' Retirement System created by Section 486-33, General Code, became the Public Employes Retirement System. This section defines "health employe" as follows:

"For the purpose of this Act * * * 'health employe' shall mean any person holding a health office not elective, in the State

of Ohio and/or paid in full or in part by any county, municipal or other health district created by law.”

From the language employed in defining a “health employe” it is certainly clear that for the purpose of administering the provisions of the Public Employes’ Retirement System Act, Sections 486-32 to 486-75, General Code, inclusive, an employe of a health district cannot be considered a state, county, or municipal employe.

Section 486-33f, General Code, reads as follows:

“Each county, municipality, park district, conservancy district, health district and public library shall pay to the employers’ accumulation fund the same rates per centum of the compensation of each employe member employed by it for normal contribution and for the deficiency contribution as the state will be required to pay for its employes in pursuance of the provisions of Sections 486-68a to 486-68e, both inclusive. The rates per centum of such contributions shall be certified by the retirement board to the fiscal officer of each county, municipality, park district, conservancy district, health district and public library at the same time that they are certified by said board to the state.”

It is obvious from a reading of Section 486-33f, *supra*, that, in clear and concise language, a mandatory obligation is imposed upon each city health district and each general health district to pay to the Employers’ Accumulation Fund the same rates of compensation for each member of the Public Employes’ Retirement System employed by a health district as the state is required to pay for its employes.

The language employed in Section 486-53f, *supra*, can not be interpreted or construed other than that each health district must pay the employer’s contribution for its own health employes, regardless of the source of the funds from which the employes of the health district are paid. Therefore, it must be said that a health district can not be relieved of its duty to pay the full amount due to the Employers Accumulation Fund for its health commissioner or nurse or clerk, although it may be a city health district or a general health district that has complied with all the requirements of the state department of health, and thereby entitled to have refunded to it one-half of the amount of the salaries that have been paid by such general or city health district during the preceding semi-annual period, to its health commissioner, public health nurse and clerk, as provided for in Section 1261-39, *supra*.

It further must be observed that by the provisions of Section 486-33f, supra, the rates of the contributions paid by the health district to the Employers' Accumulation Fund must be certified by the Retirement Board to the fiscal officer of the health district "at the same time" as the rates are certified by the Retirement Board to the State.

Section 486-68f, provides that there shall be submitted to the Director of Finance and to the heads of the departments on or before the first of December of each even numbered year the amounts necessary to pay the state's obligation to the Employers' Accumulation Fund accruing during the biennium beginning January 1st of the following year, and that, such amounts shall be included in the budget.

Consideration must be given to the fact that the budgets which includes the expenditures for general and city health districts are prepared annually, and that therefore, the reference to the "same time" in Section 486-68f, supra, must be interpreted to mean the first day of December of each year, in order that the amounts due to the Employers' Accumulation Fund from the general and city health district can be included in the budgets that are prepared annually.

Section 1261-38, General Code, provides that 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.

In an opinion appearing in Opinions of the Attorney General for the year 1928, Vol. I, page 116, it was held in the third branch of the syllabus, as follows:

"* * * the auditor of a county which constitutes all or a major portion of a general health district, is the fiscal officer for the board of health of the general health district; the auditor of a city which constitutes a city health district, is the fiscal officer of the board of health for the city health district."

It therefore must be said that by virtue of the provisions of Section 1261-38, supra, the rates of contribution shall be certified by the retirement board to the county auditor for the general health district and to the city auditor for the city health district before December 1st of each year.

Section 486-33g, General Code, provides as follows:

"The Retirement Board shall prepare and submit to the commissioners of each county and to the executive head of each municipality, park district, conservancy district, health district,

and to the board of trustees of each public library, prior to July 15 of each year, an itemized statement of the amounts necessary to pay the obligation of each county, municipality, park district, conservancy district, health district, or public library accruing during the year beginning January 1, of the following year, and shall submit to the budget commission of each county a copy of such statement for said county and for each municipality and public library within such county. The amount so certified to each county, public library and municipality shall be included in its budget and allowed by the budget commission.

The commissioners of each county, the legislative body of each municipality, the board of commissioners of any park district, the board of directors of any conservancy district, the fiscal officers of any health district and the board of trustees of each public library shall appropriate sufficient funds to provide for such obligations of such county, public library or municipality.”

From a reading of the provisions of Section 486-33g, supra, it is clear that prior to July 15th of each year, the Retirement Board must prepare and submit to the executive head of the city health district and the executive head of the general health district an itemized statement of the amount necessary to pay the health district's obligation during the year beginning January 1st of the following year and also submit to the Budget Commission a copy of such statement for the county and for each municipality.

Section 5625-20, General Code, provides in part:

“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.”

In the case of a city health district it will be necessary for the city health district to include the amount certified to it by the Retirement Board in the list of expenditures for the ensuing fiscal year prepared by the board of health of the city health district and filed with the mayor before the first day of June in each year. After this is done, it will be incumbent upon city council to include in the budget prepared for the municipality the amount that was certified to the city health district by the Retirement Board as set forth in the estimate filed with the mayor by the board of health. In order for the city health district to include this amount in its expenditures it will be necessary for the Retirement Board to prepare prior to June 1, and submit the itemized statement of the amount due from the city health district to the Employers' Accumulation Fund. So far as the time when such itemized statement is to be submitted by the retirement board, no provision is made other than that it must be prior to July 15th.

Section 1261-40, General Code, provides as follows :

“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 municipalites. 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 opporportionment is made. The county auditor, when making his semi-annual apporportionment of funds shall retain at each such semi-annual apporportionment one-half the amount so apporportioned to each township and municipality. Such moneys shall be placed in a separate fund, to be known as the ‘district health fund.’ When a general health district is composed of townships and municipalities in two or more

counties, the county auditor making the original apportionment shall certify to the auditor of each county concerned the amount apportioned to each township and municipality in such county. Each auditor shall withhold from the semi-annual apportionment to each such township or municipality the amount so certified, and shall pay the amounts so withheld to the custodian of the funds of the health district concerned, to be credited to the district health fund. Where any general health district has been united with a city health district located therein, the mayor of the city shall annually on or before the first day of June certify to the county auditor the total amount due for the ensuing fiscal year from the municipalities and townships in the district as provided in the contract between such city and the district advisory council of the original health district. The county auditor shall thereupon apportion the amount so certified to the townships and municipalities, and withhold the sums so apportioned as herein provided.”

In the case of a general health district, it will be necessary for the Retirement Board to prepare and submit to the board of health of the general health district, sometime prior to the first Monday of April, the amount necessary to pay the contribution of the general health district for the Employers' Accumulation Fund for the year beginning January 1st of the following year. After this is done it will then be incumbent upon the board of health of the general health district to include this amount in its itemized estimate of expenditures for the general health district for the fiscal year beginning on the first day of January next ensuing, which must be prepared and certified by it to the county auditor on or before the first Monday of April. In accordance with the provisions of Section 1261-40, *supra*, it then becomes mandatory that the county auditor submit such estimate to the budget commissioners and after approval of such estimate by the budget commissioners, the county auditor is required to allocate such approved budget among the various taxing subdivisions, that is, among the townships and municipalities that comprise the general health district. Naturally the amount apportioned to each taxing subdivision for current expenses will include the taxing subdivision's share of the whole amount due from the general health district to the Employers' Accumulation Fund. It therefore follows that the pro rata share due the Employers' Accumulation Fund from each municipality and township comprising the general health district will be included in the estimate of expenditures that each township must prepare and file with its township trustees and each municipality must prepare and file with its mayor before June 1st of each year in order that on or

before the 15th day of July the township trustees as the taxing authority for the township and the council as the taxing authority for the municipality can adopt their respective budgets in accordance with the provisions of Section 5625-20, supra.

The manner in which the levies for a general health district are secured is set forth in an opinion appearing in Opinions of the Attorney General for 1933, Volume II, page 1389, wherein at page 1392, it was said :

“It would appear to be a reasonable interpretation of such sections if Sections 1261-40, 5625-5 and 5625-10, 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 commissioner the county auditor is then required to allocate such approval 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 * * 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.”

To the same effect is an opinion appearing in Opinions of the Attorney General for the year 1933, Vol. I, page 149, wherein in the body of the opinion, at page 151, it is said :

“It is obviously the duty of the board of health of a general health district to request from the taxing authorities of each township and municipality within the general health district the amount apportioned to such township or municipality by the county auditor for the district health fund. This request should be made on or before June 1st. * * The annual tax budget of each township or municipality containing an item showing the amount which that subdivision must raise the district health fund shall, after adoption be submitted to the county auditor on or be-

fore the 20th day of July, or at such later time as may be prescribed by the Tax Commission.”

In Opinions of the Attorney General for 1929, Volume III, page 1847, it was said at page 1848:

“Obviously the first sentence of Section 5625-20, 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 districts. 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 comprising the district the amount that is to be included in their respective budgets for health purposes.”

Therefore, in specific answer to your question it is my opinion that it will be necessary for the city health district to include in its annual budget the amount certified to it by the retirement board for the Employers’ Accumulation Fund for the year beginning January 1st of the following year; and that after the county auditor has submitted to each township and municipality that comprises a general health district the pro rata share that is due to the employers’ accumulation fund from each township and municipality included in the general health district it will be necessary for each township and municipality to include such amount submitted to it in its annual budget for the year beginning January 1st of the following year.

Respectfully,

HERBERT S. DUFFY,
Attorney General.