

OPINION NO. 80-089**Syllabus:**

The board of health of a general health district, having found a building to be a public nuisance and ordered it to be removed, in the event that its order is neglected or disregarded may, if the board itself lacks the necessary equipment to do so, let bids and contract for the removal of the building and certify the cost and expense thereof to the county auditor for assessment as a lien against the property to be collected as other taxes.

To: Lowell S. Petersen, Ottawa County Pros. Atty., Port Clinton, Ohio
By: William J. Brown, Attorney General, December 17, 1980

I have before me your request for an opinion concerning whether the board of health of a general health district, having found a structure dangerous to life or health and ordered it to be removed, may, in the event that its order is not complied with, let bids and contract for the removal of the building and certify the costs and expenses thereof to the county auditor for assessment as a lien against the property.

Boards of health are creatures of statute, and therefore have only such powers as are expressly granted by statute, or necessarily implied therefrom. Brunner v. Rhodes, 95 Ohio App. 259, 119 N.E.2d 105 (1953). The legislature has codified the provisions that govern boards of health and health districts in R.C. Chapters 3707 and 3709.

Turning to the facts you have presented, I understand from your letter that the building in question has been found by the board of health to be a public nuisance and directed to be removed by an order issued under R.C. 3707.01. That section grants boards of health broad powers to protect the public health, and states, in pertinent part:

The board of health of a city or general health district shall abate and remove all nuisances within its jurisdiction. It may, by order, compel the owners, agents, assignees, occupants, or tenants of

any lot, property, building, or structure to abate and remove any nuisance therein, and prosecute such persons for neglect or refusal to obey such orders. . . .

When a building, erection, excavation, premises, business, pursuit, matter, or thing, or the sewerage, drainage, plumbing, or ventilation thereof is, in the opinion of the board, in a condition dangerous to life or health, and when a building or structure is occupied or rented for living or business purposes and sanitary plumbing and sewerage are feasible and necessary, but neglected or refused, the board may declare it a public nuisance and order it to be removed, abated, suspended, altered, or otherwise improved or purified by the owner, agent, or other person having control thereof or responsible for such conditions, and may prosecute him for the refusal or neglect to obey such order. The board may, by its officers and employees, remove, abate, suspend, alter, or otherwise improve or purify such nuisance and certify the costs and expense thereof to the county auditor, to be assessed against the property and thereby made a lien upon it and collected as other taxes. (Emphasis added.)

R.C. 3707.01 authorizes a board of health to order removal of a structure found dangerous to life or health, and, by its officers and employees, to remove or abate the nuisance.

In addition, R.C. 3707.02 states the procedure to be followed by the board of health if one of its orders is neglected or disregarded:

When an order of the board of health of a city or general health district, made pursuant to section 3707.01 of the Revised Code, is neglected or disregarded, in whole or in part, the board may elect to cause the arrest and prosecution of all persons offending, or to perform, by its officers and employees, what the offending parties should have done. If the latter course is chosen, before the execution of the order is begun, the board shall cause a citation to issue and be served upon the persons responsible, if residing within the jurisdiction of the board, but if not, such citation shall be mailed to such persons by registered letter, if the address is known or can be found by ordinary diligence. If the address cannot be found, the board shall cause the citation to be left upon the premises, in charge of any person residing thereon, otherwise it shall be posted conspicuously thereon. The citation shall briefly recite the cause of complaint, and require the owner or other persons responsible to appear before the board at a time and place stated, or as soon thereafter as a hearing can be had, and show cause why the board should not proceed and furnish the material and labor necessary and remove the cause of complaint.

If the persons cited appear, they shall be fully apprised of the cause of complaint and given a fair hearing. The board shall then make such order as it deems proper, and if material or labor is necessary to satisfy the order, and the persons cited promise, within a definite and reasonable time, to furnish them, the board shall grant such time. If no promise is made, or kept, the board shall furnish the material and labor, cause the work to be done, and certify the cost and expense to the county auditor. If the material and labor are itemized and the statement is accompanied by the certificate of the president of the board, attested by the clerk, reciting the order of the board and that the amount is correct, the auditor has no discretion, but shall place such sum against the property upon which the material and labor were expended, which shall, from the date of entry, be a lien upon the property and be paid as other taxes are paid. (Emphasis added.)

R.C. 3707.02 authorizes a board of health, if its order for removal of a structure has been ignored, to furnish the material and labor for removing the structure, cause the work to be done, and certify the cost and expense to the county auditor to be a lien upon the property. It does not indicate precisely what steps the board may take in "caus[ing] the work to be done."

While it is clear from the foregoing that a board of health itself may, provided it complies with the requirements of R.C. 3707.01 and 3707.02, remove or abate a public nuisance, the statutes do not expressly authorize the procedure you have proposed—that is, the letting of bids and contracting for the removal of a nuisance. Thus, the authority of a board of health to let bids and contract for the removal of a building it has declared to be a public nuisance, if it exists, must be implied from the statutory scheme of the provisions governing boards of health and health districts.

Boards of health have broad authority to enact reasonable measures to protect the public health and prevent disease. See Schlenker v. Bd. of Health, 171 Ohio St. 23, 167 N.E.2d 920 (1960) (the business of producing and selling milk is subject to reasonable regulation by a board of health); Weber v. Bd. of Health, 148 Ohio St. 389, 74 N.E.2d 331 (1947) ("the board of health of a general health district has a wide latitude in making and enforcing rules and regulations for the public health"). In addition, both R.C. 3709.21 ("[t]he board of health of a general health district may make such orders and regulations as are necessary. . . for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances") and R.C. 3709.22 ("[e]ach 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 disease" (emphasis added)) evince a legislative intent to grant boards of health wide discretion in accomplishing their duty to protect the public health. State ex rel. Pansing v. Lightner, 32 Ohio N.P. (n.s.) 376 (C.P. Montgomery County 1934).

In order to find that the board of health in your inquiry may "cause the work to be done" by letting out bids and contracting for the removal of a building it has declared to be a public nuisance, it must first be established that a board of health has the general authority to contract. In looking at various sections of R.C. Chapter 3709, I find a clear indication that boards of health may enter into contracts to assist in protecting the health of their inhabitants. See R.C. 3709.07 (a general health district may enter into a contract with one or more city health districts to form a combined district); R.C. 3709.08 (a board of health of a city health district may enter into contracts with other city health districts to provide health service); R.C. 3709.085 (a board of health of a city or general health district may contract with a political subdivision or governmental agency to obtain services to control air pollution); R.C. 3709.23 (a board of health of a city or general health district may contract for laboratory work with an existing laboratory). While there is no specific mention in the Code provisions of the power of a board of health to let bids and contract for the removal of a public nuisance, I find that the authority of the board of health in R.C. 3709.22 to "provide for the inspection and abatement of nuisances dangerous to public health or comfort" and the authority of the board of health in R.C. 3707.02 to "furnish the material and labor [and] cause the work to be done" of necessity include the power to contract with others to perform those actions should the board itself lack the necessary equipment to do so. In C.B. Transportation v. Butler County Board of Mental Retardation, 60 Ohio Misc. 71, 397 N.E.2d 781 (C.P. Butler County 1979), the court concluded that the authority given a county board of mental retardation under R.C. 5126.03(C) to "provide" necessary transportation for mentally retarded persons gave the board the power to enter into contracts with third persons to perform this responsibility. In finding that the power to contract was necessarily implied from the statute, the court stated: "[I]t would be incongruous to hold the Board of Mental Retardation to a duty to 'provide' transportation while withholding the authority to obtain the means of transportation." 60 Ohio Misc. at 79, 397 N.E.2d at 781. Accord 1978 Op. Att'y Gen. No. 78-027 (the authority of a board of mental

retardation to purchase or lease motor vehicles is so integrally related to the duty to "provide" transportation found in R.C. 5126.03(C) that it is a necessarily implied power). Therefore, I conclude that the board of health of a general health district, having declared a building to be a public nuisance and lacking the necessary equipment itself, may "cause the work to be done" by letting out bids and contracting for the removal or abatement of a nuisance.

The only issue relating to your inquiry that remains is whether the board of health, once it has let bids for the removal of the nuisance, may certify the cost thereof to the county auditor for assessment against the property as a lien to be collected as other taxes. R.C. 3707.02 provides that upon causing the work to be done, the board "shall . . . certify the cost and expense to the county auditor." The auditor is then required to place a lien on the property involved and collect the amount as a tax. I can see no reason why the fact that the board of health has "caused the work to be done" by third parties should alter this statutory scheme.

Therefore, it is my opinion, and you are so advised, that the board of health of a general health district, having found a building to be a public nuisance and ordered it to be removed, in the event that its order is neglected or disregarded may, if the board itself lacks the necessary equipment to do so, let bids and contract for the removal of the building and certify the cost and expense thereof to the county auditor for assessment as a lien against the property to be collected as other taxes.