

OPINION NO. 76-066

Syllabus:

A combined general health district may provide for the rental of quarters by virtue of the contract signed pursuant to R.C. 3709.07 and R.C. 3709.28 which allows the board of health to alter, change, or create items in the appropriations. (1954 Op. Att'y Gen. No. 3499 affirmed and followed; 1972 Op. Att'y Gen. No. 72-098 distinguished.)

To: Roger R. Ingraham, Medina County Pros. Atty., Medina, Ohio
By: William J. Brown, Attorney General, September 17, 1976

You have requested an opinion as to the following:

"May a combined general health district enter into a contract for the rental of space

relying on 1954 Op. Att'y Gen. No. 3499 in light of recent Attorney General Opinions?"

As described in your request, the space being utilized by the Medina County General Health District, a combined general health district under R.C. 3709.07 is not adequate to meet the District's expanding needs and there is no more space available in county buildings. The District desires to rent additional space.

R.C. 3709.01 mandates that the state shall be divided into health districts with each city constituting a "city health district" and all the townships and villages in each county combining to constitute a "general health district." R.C. 3709.07 allows one or more city health districts to unite with a general health district in the formation of a single district. A combined district is formed by a contract, for the administration of health affairs, between the district advisory council of the general health district and the legislative authorities of the cities. Such contract shall state the proportion of expenses of the board of health or health department of the combined district to be paid by the city or cities and by the original general health district. R.C. 3709.28 deals with the annual estimate for current expenses and apportionment by the county auditor. The board of health of a general health district certifies to the county auditor an appropriation measure setting forth amounts for current expenses with an estimate in itemized form of the several sources of revenue available. The auditor then apportions the appropriation, which is fixed by the county budget commission, among the townships and municipal corporations composing the health district on the basis of taxable valuations. The auditor retains one half this amount from his semiannual apportionment of funds to be placed in the "district health fund." Subject to the aggregate amount available and approval of the budget commission, the board of health may transfer funds from one item to another item, increase or decrease any item, create new items, make additional appropriations, or create new appropriations. When a general health district has been united with a city health district located therein, as in the case of the Medina County [combined] General Health District, the chief executive of the city shall certify to the county auditor the total amount due from the municipal corporations and townships in the district as provided in the contract. After approval by the county budget commission the county auditor shall apportion the amounts certified and withhold the sums apportioned.

R.C. 3709.34 states:

"The board of county commissioners or the legislative authority of any city may furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of such county or city."

The Medina County General Health District, even though it desires to rent space and has funds available, may not do so if a statutory duty exists elsewhere to provide suitable quarters. Since R.C. 3709.34 appears to give the board of health a degree of discretion in the creation of appropriation items, whether R.C. 3709.34 is mandatory or optional seems to be dispositive of the question posed.

You have pointed out that various opinions of my predecessors place the duty of providing space on the county commissioners. You also have pointed out that a distinction set forth in 1954 Op. Att'y Gen. No. 3499, which would allow a combined general health district to rent space, does not appear to have been followed thereafter, and you present a question now as to the validity of that 1954 Opinion.

There have been four opinions touching on this question:

1. 1932 Op. Att'y Gen. No. 3989. The council of a municipality must provide suitable quarters for the board of health of a city health district, and consequently a city board of health has no authority to rent the same.
2. 1949 Op. Att'y Gen. No. 1085. County commissioners must provide suitable quarters for the board of a general health district.
3. 1954 Op. Att'y Gen. No. 3499 (distinguishing 1949 Op. Att'y Gen. No. 1085). In a combined general health district formed by the union of a general health district and a city health district, the item of rent is a proper item to be budgeted by the health commissioner in his annual budget, where such health district is occupying private quarters for rent which must be paid.
4. 1972 Op. Att'y Gen. No. 72-098. A board of county commissioners must provide suitable quarters for the county health department either inside the county courthouse or elsewhere.

It would appear that the 1954 Opinion is directly on point to your problem and should be controlling when applied to a combined general health district formed by uniting a general health district with a city health district. My 1972 Opinion relied very heavily on the mandatory nature of the word "may" as used in the Revised Code. Where the public has an interest in the exercise of the powers conferred, "may" is construed as "shall" or "must". See, 1932 Op. Att'y Gen. No. 3989. The public interest requires that the board carry out the duties imposed upon it by statute, however, if facilities have been provided for in the contract, by rental or otherwise, then the duty toward the public interest has been satisfied.

In 1972 Op. Att'y Gen. No. 72-098, I was questioned concerning the removal of a county health department from the Clinton County Courthouse. The Health Commissioners desired that the board of county commissioners provide space elsewhere. The duty was found to rest on the county board to provide suitable quarters because the combined general health district in Clinton County had not seen fit to provide otherwise. The instant situation is different because the contract establishing the combined district provided funds sufficient for it to appropriate for rental space, without requiring one of the parties to reallocate to the district additional resources in the form of public office space.

Therefore, it is my opinion and you are so advised that a combined general health district may provide for the rental of quarters by virtue of a contract which allows for funds to be used for rental expenses and which is signed pursuant to R.C. 3709.07 and 3709.28 -- which allow the board of health to alter, change, or create items in appropriations. (1954 Op. Att'y Gen. No. 3499 affirmed and followed; 1972 Op. Att'y Gen. No. 72-098 distinguished.)