

form or manner, it includes a negative that it shall not be done otherwise.”

Citing decisions of the courts of last resort of Utah, Alabama and Kentucky, this same author states on page 474:

“A statute creating a board of public works for cities of the first class and conferring powers on such boards impliedly repeals so much of former statutes as confers the same powers upon the city councils. And generally an act vesting the control of a thing in one body or board is repealed by a subsequent act vesting the same control in another body or board.”

It is my judgment that the foregoing principles of statutory construction are applicable to and dispositive of the question here under consideration. This is strengthened by a consideration of the fact that the General Assembly has expressly repealed the present provisions of the law requiring the Auditor to audit the state insurance fund.

It is accordingly my opinion, in view of the foregoing, that on and after the effective date of Section 1465-55a, General Code, as amended by House Bill 617, the Auditor of State will not be authorized or required to audit the state insurance fund of the Industrial Commission.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

997.

COUNTY BUDGET COMMISSION—POWER TO REDUCE ANY
ITEM OR ITEMS IN ESTIMATE OF COUNTY BOARD OF
HEALTH—FINANCIAL COORDINATING BODY.

SYLLABUS:

A county budget commission is the financial coordinating body of the county and possesses the power under Section 1261-40, General Code, to reduce any item or items in the estimate submitted by a county health board, even though the estimate was not submitted in accordance with Section 1261-40, but was submitted in the form of a request for funds

which was contained in the budgets of the various taxing authorities of the county.

COLUMBUS, OHIO, August 11, 1937.

HON. H. LLOYD JONES, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR: YOUR request for my opinion reads as follows:

“Where a health board meets in accordance with Section 1261-40, General Code, and certifies their estimate to the County Auditor and such estimate is not submitted to the budget commission for its action at that time and the health board in conformity to Section 5625-20, General Code, certifies to each taxing district the amount each district should pay based upon such estimate, does the budget commission then have the power to reduce said estimate or is it mandatory upon the taxing districts to include the amount so certified in their annual budgets.”

You refer to Sections 1261-40 and 5625-20, General Code. 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 district 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 of 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 municipalities. 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 apportionment is made. The county auditor making his semi-annual apportionment of funds shall retain at such semi-annual apportionment one-half of the amount so apportioned to each township and municipality. Such monies shall be placed in a separate fund, to be known as the “district health fund.” When a general health district is composed of town-

ships and municipalities in the 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 as certified to the townships and municipalities, and withhold the sums so apportioned as herein provided."

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

"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 sub-division 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 sub-division, 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."

These sections providing for the raising of revenues for the expenses of health districts and the method of budget procedure are closely *in pari materia* and must be construed together so as to give effect to the provisions of both sections if possible. See *Maxfield vs. Brooks*, 110 O. S. 366.

It should be noted that Section 1261-40, General Code, provides expressly for the power of the budget commissioners to reduce any item or items in the estimate of the general health district, which items, when fixed by the budget commissioners, are certified to the county auditor who must apportion the total amount among the townships and municipalities composing the health district on the basis of the taxable valuation in such townships and municipalities. It should be noted further that Section 5625-20, General Code, provides expressly for the notifying by the health district of the taxing authorities within the health district an estimate of the contemplated revenue and expenditures of the health district for the ensuing fiscal year, which filing is for the assistance of the taxing authority in arriving at the total amount necessary to be raised by taxation for the various expenses of the taxing authorities. In other words, the boards of health in the general health districts must submit their estimate to the county auditor and also to each taxing authority within the health district and between the taxing authorities and the budget commissioners amounts are agreed upon for the operation of the health district.

Obviously, it is the duty of the boards of health to request from the taxing authorities within the health district the amount apportioned to such subdivision by the county auditor for the benefit of the health district. This request should of course be made according to the provisions of Section 5625-20, General Code, so that the annual tax budget of each subdivision may show the amount which that subdivision must raise for the benefit of a health district.

The budget law was adopted so as to make the system of taxation uniform throughout the county and also so as to set up the proper check upon the various taxing authorities. The budget commission is the county financial coordinating body for the revision and readjustment of estimates and generally to see that all necessary items for debt charges and current expenses are contained in the various budgets of the local taxing authorities and to see that the same are within the limitations imposed by the State Constitution. It, of course, is the intent of the budget law that no more and no less taxes be levied than necessary for the financial needs of the county and its subdivisions. The budget law outlines very definitely the procedure to be followed in making up the budgets for the various subdivisions and the levying of the necessary taxes within the constitutional limitations for the payment of the necessary operating expenses and debt charges of the various subdivisions.

According to your letter, the board of health certified its estimate to the county auditor but this estimate was not submitted to the budget commission. The board of health then certified to each taxing district within the health district the amount each taxing district should pay, based upon

such estimate, and the taxing districts included such estimates in their budgets. The various budgets then were submitted to the budget commission for its action, according to law.

If the budget commissioners have express power by Section 1261-40, General Code, to reduce any item or items in the board of health estimate before the auditor certifies the estimate to the taxing authorities within such district, I see no reason why the budget commissioners would not have the power to reduce any item or items in the budgets of the taxing authorities, which budgets contained the amounts requested by the health district.

It was held in an opinion of a former Attorney General, reported in Opinions of the Attorney General for 1929, Vol. II, Page 1847, as disclosed in the syllabus as follows:

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

It is therefore my opinion, in specific answer to your inquiry, that the budget commission possesses the power to reduce the estimate of the health district when the estimate of the health district is included in the various budgets submitted by the various taxing authorities within the health district.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

998.

APPROVAL—BONDS OF IRONTON CITY SCHOOL DISTRICT,
LAWRENCE COUNTY, OHIO, \$83,500.00.

COLUMBUS, OHIO, August 11, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Ironton City School Dist., Lawrence
County, Ohio, \$83,500.00.