

Syllabus:

1. Absent express statutory authority, the board of health of a general health district may not, pursuant to contract or otherwise, delegate to a county its duty to perform plumbing inspections.
2. A county building department and its personnel that become certified by the Board of Building Standards under R.C. 3781.10(E)(1) or (2) do not become authorized by such certification to perform plumbing inspections.
3. The Superintendent of Industrial Compliance has no authority to certify county building department employees to perform plumbing inspections.

To: Dennis P. Will, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Jim Petro, Attorney General, September 21, 2006

You have requested an opinion concerning the authority of a county building department to contract with a general health district to perform plumbing inspections on behalf of the general health district. You specifically ask:

Is it permissible that the plumbing inspections required by the Ohio State Building codes be done on behalf of the Board of Health, by inspectors employed with the County Building Department pursuant to contractual agreement or other understanding between the local Board of Health and the County Building Department?

For the reasons that follow, we conclude that, absent express statutory

authority, the board of health of a general health district may not, pursuant to contract or otherwise, delegate to a county its duty to perform plumbing inspections. In addition, certification of a county building department and its personnel by the Board of Building Standards under R.C. 3781.10(E)(1) or (2) does not authorize such department or its personnel to perform plumbing inspections.¹ Finally, the Superintendent of Industrial Compliance has no authority to certify county building department employees to perform plumbing inspections.

Powers and Duties of Board of Health of General Health District

Before addressing the aspect of your question concerning the authority of a county building department to perform plumbing inspections on behalf of the board of health of a general health district, let us briefly examine the powers and duties of a board of health to perform plumbing inspections.² We begin by noting that, because the board of health of a general health district is a creature of statute, it has only those powers and duties conferred upon it by statute, either expressly or by necessary implication. *Browning-Ferris Industries v. Mahoning County Bd. of Health*, 69 Ohio App. 3d 96, 590 N.E.2d 61 (Franklin County 1990); 2004 Op. Att'y Gen. No. 2004-047; 2000 Op. Att'y Gen. No. 2000-048.

Board of Health's Duties with Respect to Plumbing

Certain duties with respect to plumbing are imposed upon a board of health of a general health district by R.C. 3707.01, which states:

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. *Except in cities having a building department*, or otherwise exercising the power to regulate the erection of buildings, *the board may regulate the location, construction, and repair of water closets, privies, cesspools, sinks, plumbing, and drains*. In cities having such departments or exercising such power, the legislative authority, by ordinance, shall prescribe such rules

¹ You indicate that Lorain County is in the process of obtaining certification of its building department by the Board of Building Standards under R.C. 3781.10, and that none of the county building department's personnel is currently certified. We will, therefore, address the powers and duties a county building department and its personnel may exercise once they become certified by the Board of Building Standards under R.C. 3781.10, and will not address the powers and duties that a previously certified county building department or its personnel may or must perform.

² Pursuant to R.C. 3709.01, the state is divided into health districts. Each city constitutes a city health district, while the townships and village in each county constitute a general health district. *Id.* Certain combinations of health districts also constitute general health districts. *Id.* Each general health district is administered by a board of health, as described in R.C. 3709.02.

and regulations as are approved by the board and shall provide for their enforcement.

The board *may regulate* the location, construction, and repair of yards, pens, and stables, and the use, emptying, and cleaning of such yards, pens, and stables and of water closets, privies, cesspools, sinks, *plumbing*, drains, or other places where offensive or dangerous substances or liquids are or may accumulate.

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 condition, 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.)

Thus, pursuant to R.C. 3707.01, a board of health of a general health district possesses authority to regulate plumbing as part of its duty to abate and remove nuisances within the health district.

Additional duties with respect to plumbing are imposed upon the board of health of a general health district, among others, by R.C. 3781.03(C), pursuant to which the Division of Industrial Compliance within the Department of Commerce, *boards of health* of health districts, and certified departments of building inspection of municipal corporations, “subject to [R.C. Chapter 3703], *shall enforce* [R.C. Chapter 3781 and R.C. Chapter 3791] and the rules adopted pursuant to those chapters that relate to *plumbing*.” (Emphasis added.) *See generally, e.g.*, 9 Ohio Admin. Code 4101:3-1-01.2 (stating that the Ohio Plumbing Code “shall regulate the design, installation, maintenance, alteration, repair, relocation, replacement, addition to, use and *inspection of plumbing* systems and equipment” (emphasis added)).

Among the provisions to which the entities described in R.C. 3781.03(C) are subject in the enforcement of the plumbing laws mentioned therein is R.C. 3703.01,³ division (B) of which describes the circumstances in which the Division of Industrial Compliance, boards of health of city and general health districts, as

³ R.C. 3703.01 states, in pertinent part:

(A) *The division of industrial compliance* in the department of commerce *shall*:

well as municipalities, shall *not* perform plumbing inspections or are without jurisdiction to inspect plumbing. For example, R.C. 3703.01(B)(4) states: “A board of health of a health district does not have jurisdiction to inspect plumbing or collect

(1) *Inspect all nonresidential buildings* within the meaning of [R.C. 3781.06];

(2) Condemn all unsanitary or defective plumbing that is found in connection with those places;

(3) Order changes in plumbing necessary to insure the safety of the public health.

(B) (1) *The division of industrial compliance and boards of health of city and general health districts shall not inspect plumbing or collect fees for inspecting plumbing in particular types of buildings in any municipal corporation that has been certified by the board of building standards under [R.C. 3781.10] to exercise enforcement authority for plumbing in such types of buildings.*

(2) *The division shall not inspect plumbing or collect fees for inspecting plumbing in particular types of buildings in any health district that has employed one or more approved plumbing inspectors to enforce [R.C. Chapter 3781 and R.C. Chapter 3791] and the rules adopted pursuant to those chapters relating to plumbing in such types of buildings.*

(3) A municipal corporation does not have jurisdiction to inspect plumbing or collect fees for the inspection of plumbing in types of buildings for which it has not been certified by the board of building standards under [R.C. 3781.10] to exercise enforcement authority.

(4) *A board of health of a health district does not have jurisdiction to inspect plumbing or collect fees for the inspection of plumbing in types of buildings for which it does not have an approved plumbing inspector.*

(C) *The superintendent of industrial compliance shall adopt rules prescribing minimum qualifications based on education, training, experience, or demonstrated ability, which the superintendent shall use in certifying or recertifying plumbing inspectors to do plumbing inspections for health districts and for continuing education of plumbing inspectors. Such minimum qualifications shall be related to the types of buildings for which a person seeks approval.*

....

(G) Notwithstanding any other provision of this section, the division shall make a plumbing inspection of any building or other place that there is reason to believe is in a condition to be a menace to the public health. (Emphasis added.)

fees for the inspection of plumbing in types of buildings for which it does not have an approved plumbing inspector.”⁴ Thus, the broad duty R.C. 3781.03(C) imposes upon a board of health of a general health district, among others, to enforce laws related to plumbing is limited by R.C. 3703.01(B).

Examination of the other statutory powers and duties of a board of health of a general health district reveals no express authorization for such board to contract with a county for the performance of, or to otherwise delegate to a county, the board’s powers and duties with respect to plumbing or the performance of plumbing inspections. *Cf.* R.C. 3709.081 (authorizing a general health district to contract, in certain circumstances, with other health districts for public health services); R.C. 3709.085(A) (stating, in part, “[t]he board of health of a city or general health district may enter into a contract *with any political subdivision* or other governmental agency *to obtain or provide all or part of any services*, including, but not limited to, enforcement services, for the purposes of [R.C. Chapter 3704], the rules adopted and orders made pursuant thereto, or any other ordinances or rules for the prevention, control, and abatement of *air pollution*” (emphasis added)). Rather, as provided in [2005-2006 Monthly Record] Ohio Admin. Code 1301:3-2-04(A) at 2375: “Certified municipal building departments may employ plumbing inspectors; *certified township and county building departments shall not employ plumbing inspectors. Plumbing inspections are the jurisdiction of the county health district.* The plumbing inspector *employed* by the county board of health has exclusive jurisdiction to enforce the provisions of the plumbing code.” (Emphasis added.)

Because the performance of plumbing inspections involves the exercise of judgment and discretion in determining whether plumbing meets the standards necessary for approval, *see* 1994 Op. Att’y Gen. No. 94-030, the board of health of a general health district, absent express statutory authority, may not, pursuant to contract or otherwise, delegate to a county its duty to perform plumbing inspections. *See id.* at 2-135 (“the authority of a public body to delegate official duties to another entity, whether public or private, is limited, and, in the absence of specific statutory authority therefor, may only be exercised with respect to purely ministerial duties.” 1987 Op. Att’y Gen. No. 87-083 at 2-558 n.1”).

Support for this conclusion is found in R.C. 3781.10(E)(7), which states:

⁴ In Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff., in pertinent part, Sept. 29, 2005), the General Assembly amended R.C. 3703.01(C) to provide for the certification or recertification, rather than the “approval,” of “inspectors to do plumbing inspections for health districts,” and to have the Superintendent of Industrial Compliance within the Department of Commerce, rather than the “Director,” certify or recertify such plumbing inspectors. The General Assembly did not, however, alter the references in R.C. 3703.01(B)(2) and (4) to “approved plumbing inspectors.” It is unclear, therefore, whether the references in R.C. 3703.01(B) to “approved” plumbing inspectors includes not only those plumbing inspectors who were “approved” prior to the enactment of Am. Sub. H.B. 66, but also those plumbing inspectors who become “certified” under R.C. 3703.01(C) as amended by Am. Sub. H.B. 66.

Enforcement authority for approval of plans and specifications and enforcement authority for inspections may be exercised, and plans and specifications may be approved and inspections may be made on behalf of a municipal corporation, township, or county, by any of the following who[m] the board of building standards certifies:

(a) Officers or employees of the municipal corporation, township, or county;

(b) Persons, or employees of persons, firms, or corporations, pursuant to a contract to furnish architectural, engineering, or other services to the municipal corporation, township, or county;

(c) *Officers or employees of, and persons under contract with, a municipal corporation, township, county, health district, or other political subdivision, pursuant to a contract to furnish architectural, engineering, or other services. (Emphasis added.)*

R.C. 3781.10(E)(7) clearly indicates that the General Assembly contemplated the delegation of certain enforcement authority, including inspections, to the persons and entities listed in R.C. 3781.10(E)(7)(a)-(c). That the General Assembly limited to municipalities, townships, and counties the entities that may delegate their enforcement and inspection duties, however, also clearly indicates that the General Assembly did not intend to include boards of health among those who may delegate their enforcement, approval, or inspection duties. Had the General Assembly intended to authorize boards of health to delegate such duties to another person or entity, it could easily have included such boards among those upon whose behalf the specified persons and entities may act under R.C. 3781.10(E)(7). *See generally State v. Taniguchi*, 74 Ohio St. 3d 154, 156, 656 N.E.2d 1286 (1995) (“[a] court should give effect to the words actually employed in a statute, and should not delete words used, or insert words not used, in the guise of interpreting the statute”). We conclude, therefore, that, in the absence of express statutory authority, a board of health of a general health district may not, pursuant to contract or otherwise, delegate to a county its duties to perform plumbing inspections.

County Building Departments

Through communications with members of your staff, it has come to our attention that part of your concern is whether a county building department that has not yet been certified by the Board of Building Standards will be authorized to employ individuals to perform plumbing inspections once the county department is certified by the Board of Building Standards. *See generally* note one. In order to address this concern, we must also examine the powers and duties of a county building department and the authority conferred upon such a department and its personnel by virtue of such certification.

Pursuant to R.C. 307.37(F)(1), a board of county commissioners may create a county building department and employ necessary personnel to enforce in unincorporated areas of the county *local* residential building regulations or an existing

structures code adopted by the county commissioners.⁵ R.C. 307.37(B)(1)(c) requires a board of county commissioners that adopts such local regulations or code to assign the duty of administering and enforcing such local regulations or existing structures code “to a county officer or employee who is trained and qualified for those duties.” Any such county officer or employee must possess the minimum qualifications established by a resolution of the board of county commissioners. R.C. 307.37(B)(1)(c).⁶

A county building department may perform additional duties as described in R.C. 307.37(F)(1), which authorizes a county building department to “enforce the *state residential and nonresidential building codes* adopted pursuant to [R.C. Chapter 3781]⁷ *if the building department is certified pursuant to [R.C. 3781.10] to enforce those codes,*” (emphasis and footnote added). Also, R.C. 307.37(F)(2)

⁵ See generally R.C. 307.37(B)(1)(a) (authorizing a board of county commissioners to adopt local building regulations for any “one-family, two-family, or three-family dwelling house, and any accessory structure incidental to that dwelling house,” R.C. 3781.06(C)(9)); R.C. 307.37(B)(1)(b) (authorizing a board of county commissioners to adopt, administer, and enforce an existing structures code “pertaining to the repair and continued maintenance of structures” and their premises within the unincorporated areas of the county).

⁶ R.C. 307.38 grants a board of county commissioners another alternative for the enforcement of local regulations or an existing structures code, as well as the state building codes. Pursuant to R.C. 307.38(A), a board of county commissioners may “create, establish, fill, and fix the compensation of the position of *county building inspector* in the unclassified service. In lieu of creating that position, the board may assign the duties of the office to an existing county officer who is certified pursuant to [R.C. 3781.10].” (Emphasis added.)

⁷ The state residential and nonresidential building codes are adopted by the Board of Building Standards in accordance with R.C. 3781.10(A), which states:

(A)(1) The *board of building standards shall formulate and adopt rules governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in [R.C. 3781.06], including land area incidental to those buildings, the construction of industrialized units, the installation of equipment, and the standards or requirements for materials used in connection with those buildings. The board shall incorporate those rules into separate residential and nonresidential building codes. The standards shall relate to the conservation of energy and the safety and sanitation of those buildings.*

(2) The rules governing *nonresidential buildings are the lawful minimum requirements specified for those buildings and industrialized units, except that no rule other than as provided in [R.C. 3781.108(C)] that specifies a higher requirement than is imposed by any section of the Revised Code is enforceable. The rules governing residential buildings are uniform requirements for residential buildings in any area with a*

authorizes a board of county commissioners to “direct the [county] building department, *upon certification*, to *exercise enforcement authority* and to *accept and approve plans* pursuant to [R.C. 3781.03 and R.C. 3791.04] for the class of building for which the department and personnel are certified,” (emphasis added).

Whether a county building department or its personnel may perform plumbing inspections under R.C. 307.37(F)(1) thus depends, in part, upon whether the state residential and nonresidential building codes authorize the performance of plumbing inspections by a county building department and its personnel and whether certification under R.C. 3781.10 authorizes a county building department and its personnel to perform plumbing inspections.

Certification of County Building Departments and Their Personnel by the Board of Building Standards under R.C. 3781.10(E)(1)

Let us now examine the statutory scheme governing the certification of lo-

building department certified to enforce the state residential building code. In no case shall any local code or regulation differ from the state residential building code unless that code or regulation addresses subject matter not addressed by the state residential building code or is adopted pursuant to [R.C. 3781.01].

(3) The rules adopted pursuant to this section are *complete, lawful alternatives to any requirements specified* for buildings or industrialized units *in any section of the Revised Code.* The board shall, on its own motion or on application made under [R.C. 3781.12 and R.C. 3781.13], formulate, propose, adopt, modify, amend, or repeal the rules to the extent necessary or desirable to effectuate the purposes of [R.C. 3781.06-.18].

....

(H) The residential construction advisory committee shall provide the board [of building standards] with a proposal for a state residential building code that the committee recommends pursuant to [R.C. 4740.14(C)(1)]. Upon receiving a recommendation from the committee that is acceptable to the board, the board shall adopt rules establishing that code as the state residential building code. (Emphasis added.)

See generally R.C. 3781.06 (describing the category of buildings to which it applies as including, with limited exceptions, “[a]ny building that may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public, any residential building, and all other buildings or parts and appurtenances of those buildings erected within this state”).

The state nonresidential building code appears in 9 Ohio Admin. Code 4101:1 and [2005-2006 Monthly Record] Ohio Admin. Code, while the state residential construction code, effective May 27, 2006, appears in [2005-2006 Monthly Record] Ohio Admin. Code 4101:8.

cal, including county, building departments and their personnel. As provided, in pertinent part, by R.C. 3781.10(E)(1):

The board [of building standards] *shall certify* municipal, township, and *county building departments and the personnel* of those building departments, and persons and employees of individuals, firms, or corporations as described in division (E)(7) of this section to *exercise enforcement authority, to accept and approve plans and specifications, and to make inspections*, pursuant to [R.C. 3781.03, R.C. 3791.04, and R.C. 4104.43]. (Emphasis added.)

Thus, the activities certification under R.C. 3781.10(E)(1) authorizes a person or entity to perform are: the exercise of enforcement authority, the acceptance and approval of plans and specifications, and the making of inspections, “pursuant to [R.C. 3781.03, R.C. 3791.04, and R.C. 4104.43].”⁸ We must, therefore, examine R.C. 3781.03, R.C. 3791.04, and R.C. 4104.43 to determine whether those statutes

⁸ R.C. 3781.10(E) further explains the certification authority of the Board of Building Standards and the scope of authority conferred upon local entities or individuals by such certification, in pertinent part, as follows:

(2) The board shall certify departments, personnel, and persons to *enforce the state residential building code, to enforce the nonresidential building code, or to enforce both the residential and the nonresidential building codes. Any department, personnel, or person may enforce only the type of building code for which certified.*

....

(6) This division does not require or authorize the board to certify personnel of municipal, township, and county building departments, and persons and employees of persons, firms, or corporations as described in this section, whose responsibilities do not include the *exercise of enforcement authority, the approval of plans and specifications, or making inspections* under the state residential and nonresidential building codes.

....

(8) Municipal, township, and *county building departments have jurisdiction* within the meaning of [R.C. 3781.03, R.C. 3791.04, and R.C. 4104.43], *only with respect to the types of buildings and subject matters for which they are certified* under this section.

....

(12) Upon certification, and until that authority is revoked, any county or township building department shall enforce the residential and nonresidential building codes for which it is certified without regard to limitation upon the authority of boards of county commissioners under [R.C. Chapter 307] or boards of township trustees under [R.C. Chapter 505]. (Emphasis added.)

address the performance of plumbing inspections by county building departments or their personnel.⁹

Powers of County Building Departments and Personnel Certified under R.C. 3781.10(E)(1)

We turn now to an examination of the authority conferred upon a county building department and its personnel by certification under R.C. 3781.10(E)(1) to enforce, approve, and inspect pursuant to R.C. 3781.03. Let us begin by noting that the General Assembly has assigned to different state and local entities the duty to enforce various portions of R.C. Chapter 3781 and R.C. Chapter 3791.¹⁰ As discussed above, R.C. 3781.03(C) requires the Division of Industrial Compliance, boards of health of health districts, and certified departments of building inspection

⁹ R.C. 307.37(F)(1) describes the activities a certified county building department may perform as the enforcement of the state residential and nonresidential building codes, which are part of the Ohio Administrative Code, while R.C. 3781.10(E) describes the enforcement authority for which certification may be granted in terms of specific statutory provisions.

The identity of the activities included within the enforcement authority of a certified entity or individual is further clouded by the language used in R.C. 3781.10(E)(7), which describes the activities that a certified entity or individual may perform *on behalf of*, among others, a *county*, as follows: 1) enforcement authority for approval of plans and specifications and enforcement authority for inspections, 2) the approval of plans and specifications, and 3) the performance of inspections. While R.C. 3781.10(E)(1) identifies the exercise of enforcement authority as an activity distinct from both the acceptance and approval of plans and the performance of inspections, R.C. 3781.10(E)(7) suggests that the approval of plans and the performance of inspections are, in some instances, part of the enforcement authority of a certified individual or entity, and, at other times, are separate and distinct from such enforcement authority.

¹⁰ R.C. 3781.03 states:

(A) *The fire marshal or the fire chief of a municipal corporation that has a fire department or the fire chief of a township that has a fire department shall enforce the provisions of [R.C. Chapter 3781 and R.C. Chapter 3791] that relate to fire prevention.*

(B) *The superintendent of the division of industrial compliance, the building inspector, or commissioner of buildings in a municipal corporation, county, or township in which the building department is certified by the board of building standards under [R.C. 3781.10] shall enforce in the jurisdiction of each entity all the provisions in those chapters and any rules adopted pursuant to those chapters that relate to the construction, arrangement, and erection of all buildings or parts of buildings, as defined in [R.C. 3781.06], including the sanitary condition of those buildings in relation to heating and ventilation.*

of municipal corporations, subject to R.C. Chapter 3703, to enforce R.C. Chapter 3781 and R.C. Chapter 3791 and rules adopted thereunder relating to plumbing. Nothing else within R.C. 3781.03, however, addresses the performance of plumbing inspections by any other entities, including a county building department. Thus the authority conferred upon a county building department by certification under R.C. 3781.10(E)(1) to exercise enforcement authority, approve plans and specifications, and make inspections pursuant to R.C. 3781.03 does not include the authority to perform plumbing inspections.¹¹

Let us now consider the nature of the authority conferred upon local building departments and their personnel to act under R.C. 3791.04 upon certification by the Board of Building Standards in accordance with R.C. 3781.10(E)(1). Pursuant to R.C. 3791.04,¹² the owner of a building to which R.C. 3781.06 applies is required, with certain exceptions, to submit plans or drawings, specifications, and data for the

(C) The *division of industrial compliance* in the department of commerce, the *boards of health of health districts*, and the *certified departments of building inspection of municipal corporations*, subject to [R.C. Chapter 3703], shall enforce [R.C. Chapter 3781 and R.C. Chapter 3791] and the rules adopted pursuant to those chapters that relate to *plumbing*.

(D)(1) The department of the city engineer, in cities having such departments, shall have complete authority to supervise and regulate the entire *sewerage and drainage system* of the city, including the house drain and the house sewer and all laterals draining into the street sewers.

(2) The department of the city engineer shall control and supervise the installation and construction of all drains and sewers that become a part of the sewerage system of the city and shall issue all the necessary permits and licenses for the construction and installation of all house drains and house sewers and of all other lateral drains that empty into the main sewers. The department shall keep a permanent record of the installation and location of every drain and sewer of the drainage and sewerage system of the city.

(E) This section does not exempt any officer or department from the obligation to enforce [R.C. Chapter 3781 and R.C. Chapter 3791]. (Emphasis added.)

¹¹ In contrast, a *municipal* building department that is certified by the Board of Building Standards under R.C. 3781.10(E)(1) shall, as part of its authority to enforce, approve, and inspect pursuant to R.C. 3781.03, “enforce [R.C. Chapter 3781 and R.C. Chapter 3791] and the rules adopted pursuant to those chapters that relate to *plumbing*.” R.C. 3781.03(C) (emphasis added).

¹² R.C. 3791.04 states, in pertinent part:

(A)(1) *Before beginning the construction, erection, or manufacture of any building to which [R.C. 3781.06] applies, including all*

“construction, erection, equipment, alteration, or addition” of any such building to the “municipal, township, or county building department having jurisdiction” or to the Division of Industrial Compliance. Except in the case of industrialized units, R.C. 3791.04 does not concern inspections by local building departments or the Division of Industrial Compliance. Thus, the power to act under R.C. 3791.04 that is conferred upon a local building department and its personnel by Board certification under R.C. 3781.10(E)(1) does not include the authority to perform plumbing inspections.

The final statutory purpose mentioned in R.C. 3781.10(E)(1) for which the Board of Building Standards may certify local building departments and their

industrialized units, the *owner* of that building, in addition to any other submission required by law, *shall submit plans or drawings, specifications, and data* prepared for the *construction, erection, equipment, alteration, or addition* that indicate the portions that have been approved pursuant to [R.C. 3781.12 (Board of Building Standards’ waiver)] and for which no further approval is required, *to the municipal, township, or county building department having jurisdiction* unless one of the following applies:

(a) *If no municipal, township, or county building department certified for nonresidential buildings pursuant to [R.C. 3781.10(E)] has jurisdiction, the owner shall make the submissions* described in division (A)(1) of this section *to the superintendent of the division of industrial compliance.*

(b) *If no certified municipal, township, or county building department certified for residential buildings pursuant to [R.C. 3781.10(E)] has jurisdiction, the owner is not required to make the submissions* described in division (A)(1) of this section.

....

(B) No owner shall proceed with the construction, erection, alteration, or equipment of any building until the plans or drawings, specifications, and data have been approved as this section requires, or the industrialized unit inspected at the point of origin. No plans or specifications shall be approved or inspection approval given unless the building represented would, if constructed, repaired, erected, or equipped, comply with [R.C. Chapters 3781 and 3791] and any rule made under those chapters.

....

(H) A *certified municipal, township, or county building department having jurisdiction*, or the superintendent of the division of industrial compliance, as appropriate, *shall review any plans, drawings, specifications, or data* described in this section that are *submitted to it or to the superintendent.* (Emphasis added.)

personnel to act is set forth in R.C. 4104.43,¹³ a portion of which requires the Board of Building Standards to adopt rules concerning, among other things, the inspection of building services piping and certain medical piping systems. R.C. 4104.43(A). Divisions (B) and (C) of R.C. 4104.43 authorize local building departments and, in certain instances, general health districts that are specifically certified for that purpose to inspect medical piping systems. In the event that there are no local authorities certified for such enforcement, R.C. 4104.43(D) requires the Division of Industrial Compliance to perform such inspections. Nothing in R.C. 4104.43, however, authorizes a county building department or its personnel to perform plumbing inspections. Thus, certification of a county building department and its personnel under R.C. 3781.10(E)(1) to “exercise enforcement authority, to accept and approve plans and specifications, and to make inspections” pursuant to R.C. 4104.43 does not authorize a county building department to perform plumbing inspections.

We conclude, therefore, that the authority conferred upon a county building

¹³ R.C. 4104.43 states, in pertinent part:

(A)(1) The board of building standards shall adopt rules establishing requirements for the design, installation, *inspection* of and design review procedure for *building services piping*.

(2) The board of building standards shall adopt rules establishing requirements for the design, installation, *inspection* of and design review procedure for *nonflammable medical gas, medical oxygen, and medical vacuum piping systems*.

(B) A municipal, township, or *county building department certified* under [R.C. 3781.10(E)] *shall enforce* the rules the board adopts pursuant to division (A)(2) of this section *if that building department requests and obtains special certification to enforce those rules*.

(C) *In a health district where no municipal, township, or county building department is specially certified under division (B) of this section, an employee of the health district shall enforce* the rules adopted pursuant to division (A)(2) of this section *if both of the following conditions are satisfied:*

(1) *The health district employee requests and obtains special certification* by the board to enforce those rules.

(2) The health district notifies the superintendent of the division of industrial compliance in the department of commerce that the health district’s specially certified employee shall enforce those rules.

(D) In a jurisdiction where enforcement authority as described in divisions (B) and (C) of this section does not exist, the superintendent of the division of industrial compliance shall enforce the rules the board adopts pursuant to division (A)(2) of this section. (Emphasis added.)

department and its personnel by certification under R.C. 3781.10(E)(1) does not include the authority to perform plumbing inspections.¹⁴

Certification of County Building Departments and Their Personnel by the Board of Building Standards under R.C. 3781.10(E)(2)

R.C. 3781.10(E)(2), *see generally* note eight, *supra*, provides for the certification of “departments, personnel, and persons to enforce the state residential building code, to enforce the nonresidential building code, or to enforce both the residential and the nonresidential building codes.” As further provided in R.C. 3781.10(E)(2), “[a]ny department, personnel, or person may enforce only the type of building code for which certified.” We must determine, therefore, whether certification of a county building department and its personnel under R.C. 3781.10(E)(2) to enforce the state nonresidential or residential building codes authorizes either the department or its personnel to perform plumbing inspections on behalf of a general health district.

Pursuant to R.C. 3781.10(A), the Board of Building Standards has a duty to adopt state nonresidential and residential building codes. *See generally* note seven, *supra*. In accordance with R.C. 3781.10(A), the state residential and nonresidential building code rules shall relate to, among other things, the sanitation of buildings. As used in R.C. 3781.10 in reference to a building, the word “sanitary” means “free from danger or hazard to the health of persons occupying or frequenting it or to that of the public, if such danger arises from the method or materials of its construction or from any equipment installed therein, for the purpose of lighting, heating, ventilating, or *plumbing*.” R.C. 3781.06(C)(8) (emphasis added). R.C. 3781.10(A)(1) thus requires the Board of Building Standards to include within the state residential and nonresidential building codes rules that relate to, among other things, keeping buildings “free from danger or hazard to the health of persons” arising from “the method or materials of its construction or from any equipment installed therein, for the purpose of . . . plumbing,” R.C. 3781.06(C)(8). In accordance with R.C. 3781.10(A)(1), therefore, the Board of Building Standards is required to include in the state residential and nonresidential building codes provisions relating to the sanitation, which includes plumbing, of such buildings.

¹⁴ We note that a portion of R.C. 3781.10(E)(1) authorizes the Board of Building Standards to certify “persons and employees of individuals, firms, or corporations as described in division (E)(7) of this section to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections pursuant to R.C. 3781.03, R.C. 3791.04, and R.C. 4104.43.” Unlike the description in R.C. 3781.10(E)(1) of the activities for which the Board of Building Standards may certify individuals, the description in R.C. 3781.10(E)(7) of the activities individuals certified thereunder may perform divides enforcement authority into separate categories of plan approval and inspection, and lists plan approval and the performance of inspections as separate activities. It does not appear, however, that the activities listed in R.C. 3781.10(E)(7) extend beyond those included in R.C. 3781.10(E)(1). This means that the activities listed in R.C. 3781.10(E)(7) do not include the performance of plumbing inspections.

Powers of County Building Departments and Personnel Certified under R.C. 3781.10(E)(2)

Inclusion of the Ohio Plumbing Code in the state nonresidential building code is addressed by 9 Ohio Admin. Code 4101:1-1-01, § 101.4, pursuant to which the "Ohio Plumbing Code," Ohio Admin. Code Chapters 4101:3-1 to 4101:3-13, "shall be considered part of the requirements of this code *to the prescribed extent of each such reference.*" (Emphasis added.) As further specified in rule 4101:1-1-01, § 101.4.2, Chapters 4101:3-1 to 4101:3-13 of the Administrative Code, designated as the "Ohio Plumbing Code," "shall apply to the installation, alterations, repairs and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system." *See also* 9 Ohio Admin. Code 4101:3-1-01.2 (the Ohio Plumbing Code "shall regulate the design, installation, maintenance, alteration, repair, relocation, replacement, addition to, use and inspection of plumbing systems and equipment"). Thus, pursuant to rule 4101:1-1-01, the Ohio Plumbing Code is incorporated, at least in part, into the state nonresidential building code.

Specifically concerning the performance of inspections under the Ohio Plumbing Code, 9 Ohio Admin. Code 4101:3-3-12.10 states:

312.1 Inspections. No part of any plumbing or drainage system shall be covered until it has been inspected, tested, and approved, except *as provided in this section.*

Failure of the inspector to inspect the work within four days, exclusive of Saturdays, Sundays, and legal holidays, after the work is ready for inspection, permits the work to proceed. (Emphasis added.)

Rule 4101:3-3-12.10 fails to specify by whom such inspections are to be performed. 9 Ohio Admin. Code 4101:3-1-01.3, however, states: "For administrative and enforcement provisions of this code, refer to sections 101.2 to 119.1.3 of the building code." Thus, in order to determine who has enforcement authority, and perhaps the duty to perform the inspections required by rule 4101:3-3-12.10 of the Ohio Plumbing Code, we must refer to Chapter 4101:1-1 of the Ohio Administrative Code, which "contains sections 101.2 to 119.1.3 of the [state nonresidential] building code."¹⁵

Rule 4101:1-1-03, which includes sections 103.1 to 103.3.9.6.4 of the state

¹⁵ [2005-2006 Monthly Record] Ohio Admin. Code 4101:1-1-03 at 1006 states, in pertinent part:

103.2 Building department certification requirements. *To qualify for certification*, a municipal, township, or *county building department* shall conform to the following:

1. Conformity with law. The department shall have been created in conformity with law. *The department has the option to be certified in different occupancy classifications and for different types of systems. The*

nonresidential building code, addresses the certification of local building depart-

optional system certifications are plumbing (for municipal departments only) and medical gas piping systems.

1.1 If the department does not hold the certification to enforce plumbing provisions, then the enforcement shall be done by the local board of health or the division of industrial compliance in the department of commerce.

2. Required personnel. The department, in accordance with its chosen certification, shall have personnel qualified to execute the duties required for the exercise of *enforcement authority*, the *approval of construction documents*, and the *making of inspections*, under the rules of the board. *All personnel* of municipal, township, or county building departments, and persons and employees of persons, firms, or corporations whose responsibilities include the exercise of enforcement authority shall be certified by the board of building standards pursuant to section 103.3 prior to performing such duties.

....

2.4 *Plumbing inspector*. If the department chooses to be certified to enforce plumbing provisions, then the *municipal* building department shall have in its employ or under contract at least one person holding a certificate as a plumbing inspector and designated to determine compliance with approved construction documents in accordance with section 109.7 and the rules of the board;

....

3.5 *Plumbing plans examiner*. The department may have in its employ or under contract persons holding a plumbing plans examiner certification, designated to *examine construction documents related to plumbing systems* to determine compliance with the rules of the board; *If the department does not have in its employ or under contract persons holding the plumbing plans examiner certification, then the examination of the construction documents for compliance with the plumbing provisions of the code shall be done by the master plans examiner.*

4. Contract employees. A municipal corporation, township, or county may contract with a certified building department, health district, or with persons, firms, or corporations under contract to furnish services to same, and meeting the requirements of this rule, to exercise enforcement authority, administer these rules, approve plans and specifications and perform field inspections on behalf of such municipal corporation, township, or county, providing such authority is exercised pursuant to such contract and upon application to and approval by the board of building standards;

ments and their personnel and establishes various requirements with which a municipal, township, or county building department must comply in order to be certified. Pursuant to this rule, local building departments may be certified for different occupancy classifications and for different types of systems.

As stated in § 103.2 of this rule, however, “[t]he optional system certifications are *plumbing (for municipal departments only)* and medical gas piping systems.” (Emphasis added.) Specifically concerning plumbing inspections, rule 4101:1-1-03 states, in pertinent part: “If the department chooses to be certified to enforce plumbing provisions, then the *municipal* building department shall have in its employ or under contract at least one person holding a certificate as a plumbing inspector and designated to determine compliance with approved construction documents.” (Emphasis added.) As similarly provided elsewhere in rule 4101:1-1-03, “[i]f the department does not hold the certification to enforce plumbing provisions, then the enforcement shall be done by the local board of health or the division of industrial compliance in the department of commerce.” Rule 4101:1-1-03, § 103.2. Rule 4101:1-1-03 thus contemplates that, of the various types of local building departments, only municipal building departments have the option to be

....

103.3.1 Building department personnel certification classifications. The *certifications issued by the board of building standards*, as required in section 103.3, are as follows:

....

2.3 A *plumbing plans examiner* certification qualifies a person to examine only construction documents related to plumbing systems to determine compliance with the rules of the board.

....

8. A *plumbing inspector* certification qualifies a person to inspect plumbing systems in accordance with section 109.7 to determine compliance with the approved construction documents.

....

103.3.7 Issuance of certificate and renewal. An appropriate certificate shall be issued to the applicant upon completion of the qualification requirements of section 103.3.3. The term of the certificate if subsequently issued shall begin on the date of interim approval.

103.3.7.1 Renewal. *The certificate holder shall renew at three-year intervals.* Certificates of individuals certified pursuant to section 2 of Amended Substitute House Bill No. 300 (effective September 25, 1984) shall expire three years from the date of issue. The term of all other initial certificates shall expire on the last day of June or December following three full years from the date of issue or board approval. (Emphasis added.)

certified “to enforce plumbing provisions,” *id.*, and that, in order to be certified to enforce plumbing provisions, the municipal building department must have in its employ or under contract a person who is certified as a plumbing inspector. *See generally* rule 1301:3-2-04, *supra* (jurisdiction of plumbing inspectors). The performance of plumbing inspections by a county building department or its personnel is not, therefore, authorized by the state nonresidential building code. Thus, certification of a county building department under R.C. 3781.10(E)(2) to enforce the state nonresidential building code does not authorize a county building department to perform plumbing inspections.

Let us now examine the scope of authority conferred upon a county building department and its personnel that are certified under R.C. 3781.10(E)(2) to enforce the state residential building code. The state residential building code appears in [2005-2006 Monthly Record] Ohio Admin. Code 4101:8,¹⁶ and contains various requirements for the enforcement of its provisions by local building departments.

Unlike rule 4101:1-1-01, which, to a limited extent, incorporates the Ohio plumbing code into the state nonresidential building code, [2005-2006 Monthly Record] Ohio Admin. Code 4101:8 does not expressly address the relationship between the Ohio plumbing code and the state residential building code. Rather, [2005-2006 Monthly Record] Ohio Admin. Code 4101:8-1-03 at 3297 states, in pertinent part:

103.1 General. *Before exercising authority in the enforcement of the rules of the board and before accepting and approving plans pursuant to [R.C. 3781.03 and R.C. 3791.04], municipal, township and county residential building departments and their required personnel shall have been certified by the board of building standards pursuant to [R.C. 3781.10]. Application for certification to the board of building standards shall be made on prescribed forms according to the provisions of section 103.*

Section 103.1 of rule 4101:8-1-03 thus requires a county residential building department and its personnel to be certified by the Board of Building Standards pursuant

¹⁶ Pursuant to [2005-2006 Monthly Record] Ohio Admin. Code 4101:8-1-01 at 2584, effective May 27, 2006: “Chapters 4101:8-1 to 4101:8-43 of the Administrative Code [are] designated as the ‘Residential Code of Ohio for One-, Two-, and Three-Family Dwellings.’” As is the case with the state nonresidential building code, the residential building code “shall supersede and govern any order, standard, or rule of the division of the fire marshal or industrial compliance in the department of commerce, and the department of health and of counties and townships, in all cases where such orders, standards or rules are in conflict with the rules of the board of building standards, except that rules adopted and orders issued by the fire marshal pursuant to [R.C. Chapter 3743] prevail in the event of a conflict.” [2005-2006 Monthly Record] Ohio Admin. Code 4101:8-1-02 at 2586.

to R.C. 3781.10 before enforcing the Board's rules or accepting and approving plans pursuant to R.C. 3781.03 or R.C. 3791.04.¹⁷

¹⁷ [2005-2006 Monthly Record] Ohio Admin. Code 4101:8-1-03 at 3297 refers to certain aspects of plumbing, in part, as follows:

103.2 Building department certification requirements. To qualify for certification, a municipal, township, or county residential building department shall conform to the following:

1. Conformity with law. The residential building department shall have been created in conformity with law.

1.1 If the residential building department of a *municipality* does not hold the certification to enforce plumbing provisions, then the enforcement shall be done by the *local board of health*.

1.2 A political subdivision with a nonresidential building department certified pursuant to OBC section 103.1, qualifies for certification to enforce the Residential Code of Ohio. The political subdivision must submit an application for additional certification in accordance with section 103.2.1. Personnel shall be qualified pursuant to and the department shall comply with the requirements of this section.

2. Required personnel. The residential building department shall have personnel qualified to execute the duties required for the exercise of *enforcement authority*, the *approval of construction documents*, and the *making of inspections*. All personnel of municipal, township, or county residential building departments, and persons and employees of persons, firms, or corporations whose responsibilities include the exercise of enforcement authority *shall be certified by the board of building standards* pursuant to section 103.3 prior to performing such duties.

....

2.4 Plumbing inspector. *If a residential department of a municipality chooses to be certified to enforce plumbing provisions*, then that residential building department shall have in its employ or under contract at least one person holding a certificate as a residential plumbing inspector and designated to determine compliance with approved residential construction documents in accordance with section 109.7 and applicable provisions of this code;

....

3. Contract employees. A municipal corporation, township, or county may contract with a certified residential building department, health district, or with persons, firms, or corporations under contract to furnish such services, and meeting the requirements of this rule, to exercise *enforcement authority*, *administer these rules*, *approve residen-*

Pursuant to [2005-2006 Monthly Record] Ohio Admin. Code 4101:8-1-04 at 2586, the enforcement of matters related to the sanitary construction of residential buildings is vested in the boards of health of city or general health districts or in the residential building department of a municipality; no authority is vested in a county building department. *See generally* R.C. 3703.01(B)(1) (stating, “[t]he division of industrial compliance and boards of health of city and general health districts shall not inspect plumbing or collect fees for inspecting plumbing in particular types of buildings in any *municipal corporation* that has been *certified by the board of building standards* under [R.C. 3781.10] to exercise enforcement authority for plumbing in such types of buildings” (emphasis added)). We conclude, therefore, that certification of a county building department under R.C. 3781.10(E)(2) to enforce the state residential building code does not include the authority to perform plumbing inspections.

Accordingly, certification of a county building department and its personnel by the Board of Building Standards under R.C. 3781.10(E)(1) or (2) does not authorize such department or its personnel to perform plumbing inspections.

Division of Industrial Compliance Lacks Authority to Certify County Building Department Employees to Perform Plumbing Inspections

Having concluded that certification of a county building department and its

tial plans and specifications and perform field inspections on behalf of such municipal corporation, township, or county, providing such authority is exercised pursuant to such contract and upon application to and approval by the board of building standards;

....

103.3.1 Residential building department personnel certification classifications. The certifications issued by the board of building standards, as required in section 103.3, are as follows:

....

5. A residential plumbing inspector certification qualifies a person to inspect residential plumbing systems in accordance with section 109.7 to determine compliance with the approved residential construction documents.

5.1 A plumbing inspector trainee certification qualifies a person to inspect residential plumbing systems under the direct supervision of an individual holding a plumbing inspector certification. (Emphasis added.)

Thus, the only mention in rule 4101:8-1-03 of the performance of plumbing inspections specifies the conditions under which a municipal residential building department may be certified to perform plumbing inspections. Nothing in [2005-2006 Monthly Record] Ohio Admin. Code 4101:8, however, expressly addresses the enforcement of the plumbing provisions of the state residential building code by a non-municipal building department or its personnel.

personnel by the Board of Building Standards under R.C. 3781.10(E)(1) or (2) does not authorize such department or its personnel to perform plumbing inspections, we must consider, as a final matter, whether the Division of Industrial Compliance may certify county building department employees to perform plumbing inspections. As a creature of statute, the Division of Industrial Compliance has only those powers and duties vested in it by statute. *See generally, e.g., Dreger v. Public Employees Retirement System*, 34 Ohio St. 3d 17, 20-21, 516 N.E.2d 214 (1987) (a creature of statute “has no authority beyond that which is expressly or impliedly conferred by statute”). Thus, the Division may certify county building department employees to perform plumbing inspections only if it possesses statutory authority to do so.

As discussed above, the authority of the Superintendent of Industrial Compliance to certify plumbing inspectors is set forth in R.C. 3703.01(C), part of which requires the Superintendent to “adopt rules prescribing minimum qualifications based on education, training, experience, or demonstrated ability, which the superintendent shall use in certifying or recertifying *plumbing inspectors to do plumbing inspections for health districts* and for continuing education of plumbing inspectors.” (Emphasis added.) Neither R.C. 3703.01(C) nor any other statute, however, authorizes the Superintendent to certify employees of a county building department to perform plumbing inspections. We conclude, therefore, that the Superintendent of Industrial Compliance has no authority to certify county building department employees to perform plumbing inspections.

Conclusions

Based upon the foregoing, we conclude that:

1. Absent express statutory authority, the board of health of a general health district may not, pursuant to contract or otherwise, delegate to a county its duty to perform plumbing inspections.
2. A county building department and its personnel that become certified by the Board of Building Standards under R.C. 3781.10(E)(1) or (2) do not become authorized by such certification to perform plumbing inspections.
3. The Superintendent of Industrial Compliance has no authority to certify county building department employees to perform plumbing inspections.