

December 13, 2004

The Honorable Kurt W. Sahloff
Putnam County Prosecuting Attorney
321 E. Main Street
P.O. Box 303
Ottawa, Ohio 45875

SYLLABUS:

2004-047

The board of health of a general health district is not authorized to use moneys from the home health services fund created pursuant to R.C. 3709.15 to make a down payment or mortgage payments for the purchase of real property to be used as office space for the general health district.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL

JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

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OPINION NO. 2004-047

The Honorable Kurt W. Sahloff
Putnam County Prosecuting Attorney
321 E. Main Street
P.O. Box 303
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Dear Prosecutor Sahloff:

We have received your request for an opinion on the question whether the Putnam County General Health district is authorized to use moneys from the home health services fund created under R.C. 3709.15 to make the down payment and mortgage payments on real property acquired by the general health district for office space. For the reasons that follow, we conclude that a general health district is not permitted to use moneys from the home health services fund to make a down payment or mortgage payments for the purchase of real property to be used as office space for the general health district.

Background

You have informed us that the Putnam County General Health District has a HomeCare and Hospice section that provides services to ill and infirm clients. Revenues for the HomeCare and Hospice operations are deposited into the home health services fund, established pursuant to R.C. 3709.15.

The Putnam County General Health District is currently leasing office space. It would like to purchase two acres of real estate and construct a building for office space. The proposal is to purchase the property through a mortgage from a financial institution and to pay the mortgage with moneys from the home health services fund. You have asked whether existing statutes authorize the general health district to acquire property in this manner.

Authority of a general health district to use a mortgage to purchase real estate

The State of Ohio is divided into general health districts (consisting of the townships and villages within a county) and city health districts. R.C. 3709.01. The districts may combine in

various ways, and combined districts that include one or more general health districts are also known as general health districts. *See* R.C. 3709.07; R.C. 3709.10; 2000 Op. Att’y Gen. No. 2000-048 at 2-293; 1991 Op. Att’y Gen. No. 91-016. A general health district is a political subdivision separate from the county and also separate from the townships and municipalities whose territory it includes. *See* 1991 Op. Att’y Gen. No. 91-016 at 2-80.

The Putnam County General Health District includes territory of townships and villages within the county. *See* R.C. 3709.01; <http://www.putnamhealth.com/board.htm>. It is governed by a board of health. *See* R.C. 3709.02-.03. The governing body of each health district has only the powers granted by statute. *See* R.C. 3709.02; R.C. 3709.07; 2000 Op. Att’y Gen. No. 2000-048 at 2-294; 1991 Op. Att’y Gen. No. 91-015 at 2-76; 1989 Op. Att’y Gen. No. 89-032 at 2-132.

As your letter indicates, the board of health of a general health district is expressly authorized to purchase real estate for the district’s purposes by means of a loan agreement, including a mortgage arrangement. On this point, R.C. 3707.55(A) states:

A board of health of a general health district *may acquire, convey, lease, or enter into a contract to purchase, lease, or sell real property for the district’s purposes, and may enter into loan agreements, including mortgages, for the acquisition of such property.* (Emphasis added.)

See 1997-1998 Ohio Laws, Part II, 4604, 4607 (Sub. H.B. 581, eff. Mar. 30, 1999) (enacting R.C. 3707.55); *see also* 2000 Op. Att’y Gen. No. 2000-048.

R.C. 3707.55 does not specify which moneys may be used to pay for the acquisition of real property. Division (C) of R.C. 3707.55 authorizes the board of county commissioners to issue securities of the county for the acquisition of real property by a general health district, “but only if the county has a contract with the general health district whereby the health district agrees to pay the county an amount equal to the debt charges on the issued securities on or before the date those charges fall due.” R.C. 3707.55(C). Thus, securities of the county may be used to fund the acquisition of real estate, but the health district must have sufficient resources to pay the county the amount of the debt charges.¹

¹ Division (B) of R.C. 3707.55(B) states that, notwithstanding anything to the contrary in R.C. 3709.34, if a board of health of a general health district acquires, leases, or enters into a contract to purchase or lease real property, the board of county commissioners has no obligation to pay for or reimburse the general health district for that property, or to furnish suitable quarters to the general health district. R.C. 3709.34 states that the board of county commissioners or the legislative authority of a city “may furnish suitable quarters” for any board of health or health department having jurisdiction over all or a major part of the county or city. This statute has been construed as imposing a mandatory duty upon a county to furnish suitable quarters to the

R.C. 3707.55 does not restrict the sources of funds that a health district may use for the acquisition of real property. However, only moneys that are available for the purchase of real property may be used for that purpose. *See, e.g.*, 2000 Op. Att’y Gen. No. 2000-048 (syllabus, paragraph 3) (“[t]he board of health of a combined general health district may not use revenue derived from a tax levied pursuant to R.C. 3709.29 to purchase real property ...”).

**Authority of a general health district
to expend moneys of the home health services fund**

The question before us is whether moneys in the home health services fund may be used to purchase real property for use as office space for the general health district. The home health services fund is created pursuant to R.C. 3709.15. That section authorizes the board of health of a general health district to provide nursing care and other therapeutic and supportive care services to maintain ill or infirm persons in their homes or elsewhere. It provides that the board of health “shall charge and collect reasonable fees not to exceed the cost of service” from patients financially able to pay, or “may accept payment” from persons or public or private agencies on behalf of the recipient, either directly or by contract. R.C. 3709.15. The board of health must retain the fees and place them in a special fund known as the home health services fund. R.C. 3709.15. By statute, the fees placed in the home health services fund “shall be used by the board *only for* defraying the cost of personnel, equipment, supplies, *rental of physical facilities including real property*, utilities, and administrative costs in providing services under this section.” *Id.* (emphasis added). The home health services fund (or any other available fund of the board) may also be used to pay for contracts with an individual or agency to furnish home health services. *Id.*

The statute thus states plainly the purposes for which moneys from the home health services fund may be expended. These purposes include costs of personnel, equipment, supplies, utilities, administration, and contracted services. With respect to the procurement of office space, the only authorized purpose is the “rental of physical facilities including real property.” R.C. 3709.15. The rental of real property is commonly understood to be the acquisition of the use or occupancy of the property. *See Black’s Law Dictionary* 1299 (7th ed. 1999) (defining “rent” to mean “Consideration paid, usu. periodically, for the use or occupancy of property (esp. real property)”). Rental is distinguished from the purchase of property, and the authority to rent real property does not encompass the authority to purchase the property. *See* 2000 Op. Att’y Gen. No. 2000-048 at 2-294; 1991 Op. Att’y Gen. No. 91-016 at 2-83; 1991 Op. Att’y Gen. No. 91-015; 1982 Op. Att’y Gen. No. 82-018 (the power to lease does not imply the power to purchase real property). *See generally* 2004 Op. Att’y Gen. No. 2004-012. There is no statutory language permitting moneys in the home health services fund to be expended for the purchase of

board of health, but to provide both a county and a city with discretion to determine whether to furnish suitable quarters to the board of health if a general health district has been combined with a city health district. *See* 2000 Op. Att’y Gen. No. 2000-048 at 2-294; 1991 Op. Att’y Gen. No. 91-016 at 2-81; 1991 Op. Att’y Gen. No. 91-015.

real property, whether as a down payment, as mortgage payments, or in any other manner. Therefore, moneys in the home health services fund are not available for these uses.

It might be argued that, because mortgage payments are made periodically, they are similar to payments for the rental of real property and, therefore, should be authorized by R.C. 3709.15. It might be argued, further, that it would be fiscally prudent for the health district to purchase real property through periodic mortgage payments rather than renting physical facilities. Neither of these arguments, however, operates to change the plain meaning of R.C. 3709.15, which clearly lists the purposes for which the home health services fund may be used and does not include the purchase of real property, either through a mortgage or by any other means.²

When statutory language is plain on its face, it presents no ambiguity and there is no need to construe the language. *See Slingsluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph 2) (“the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation”). The purposes for which the home health services fund may be used are established by the General Assembly and may be expanded only through the legislative action of the General Assembly. *See generally Bd. of Educ. v. Fulton County Budget Comm’n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975); 2004 Op. Att’y Gen. No. 2004-014 at 2-110; 2001 Op. Att’y Gen. No. 2001-033 at 2-200 (“[s]hould the General Assembly wish to modify the existing statutory provisions ... it could do so through appropriate legislation”).³

² The payment of rent for physical facilities, including real property, is considered to be an operating expense of a public body. Expenses of this nature are commonly distinguished from expenses to purchase real property and construct permanent improvements. *See* 2000 Op. Att’y Gen. No. 2000-048 at 2-297 to 2-299; 1991 Op. Att’y Gen. No. 91-016. *See generally* 2004 Op. Att’y Gen. No. 2004-012.

³ The conclusion that moneys from the home health services fund may not be used for the purchase of real property is appropriate in this case also because the intended use of the property, as expressed in your letter, is for “office space for the general health district.” There is no indication that the office space would be used exclusively to support the provision of home health services authorized by R.C. 3709.15. The statutory language authorizing expenditures from the home health services fund requires that the expenditures be limited to costs incurred in providing services under R.C. 3709.15. An attempt to use the home health services fund to pay for other costs of the health district would run counter to the express intention that home health services fees be used for home health services purposes and is objectionable on that basis as well.

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, that the board of health of a general health district is not authorized to use moneys from the home health services fund created pursuant to R.C. 3709.15 to make a down payment or mortgage payments for the purchase of real property to be used as office space for the general health district.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General