

August 20, 2010

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street, Suite 400
Lancaster, Ohio 43130

SYLLABUS:

2010-022

1. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a city may, but is not required to, furnish quarters to a combined general health district created under R.C. 3709.07. (1991 Op. Att’y Gen. No. 91-016 (syllabus, paragraph 2) and 1983 Op. Att’y Gen. No. 83-081 (syllabus, paragraph 1), approved and followed.)
2. A combined general health district formed under R.C. 3709.07 by the union of two or more city health districts and a general health district can continue to exist when one, but not all, of the contracting cities withdraws from the combined general health district.
3. Upon the withdrawal of all contracting cities from a combined general health district formed under R.C. 3709.07, the combined general health district dissolves, and the district advisory council for the former general health district may either undertake the steps necessary to reconstitute a board of health to resume operations as a general health district or execute a new contract of union under either R.C. 3709.07 or R.C. 3709.10.
4. Real property owned by a combined general health district formed under R.C. 3709.07 does not transfer by operation of law to a general health district that resumes operations after the dissolution of the combined general health district.
5. The governing authority of a combined general health district has the authority, pursuant to R.C. 3707.55, to enter into a contract to sell real property owned by the combined general health district.
6. A board of county commissioners has a mandatory obligation under R.C. 3709.34 to provide suitable quarters to a general health district that has never acquired real property and that resumes operations after the

dissolution of a combined general health district formed under R.C.
3709.07.



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

August 20, 2010

OPINION NO. 2010-022

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street, Suite 400
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

You have asked a number of questions relating to combined general health districts. Your opinion request indicates that, effective April 2001, the Fairfield County General Health District combined with the City of Lancaster Health District and the City of Pickerington Health District to form the Fairfield County Combined General Health District (the "Combined District"). In December 2003, the Fairfield County Board of Commissioners transferred via general warranty deed an office building and accompanying land, known as the "Miller Building," to the Combined District. The Miller Building currently houses the Combined District.

The City of Pickerington ("Pickerington") served a notice of termination pursuant to the contract creating the Combined District, and Pickerington's membership in the Combined District ended effective January 1, 2010. The City of Lancaster ("Lancaster") has also served a termination notice, which becomes effective on January 1, 2011. For purposes of this opinion, you have asked us to assume that the notices of termination complied with the agreement creating the Combined District.

In this context, you have asked us to address the following questions:

1. Whether a board of county commissioners is responsible, pursuant to R.C. 3709.34 or any other provision of law, for providing quarters to a combined general health district formed under R.C. 3709.07.

2. If the answer to question one is in the affirmative, whether a board of county commissioners is responsible for providing quarters to a combined general health district if the district has acquired and owns real property which it has been using for its operations and then voluntarily divests itself of the ownership of that property.
3. Whether the answer to question two would be changed or modified if, after divesting itself of the real property through a sale, the combined general health district forwards or donates the proceeds of the sale of the property to the board of county commissioners.
4. Whether a combined general health district formed under R.C. 3709.07 by the union of two or more city health districts and a general health district still exists if one, but not all, of the contracting cities terminates its membership in the combined district.
5. Whether the withdrawal of all the city members from a combined general health district, leaving the original general health district as its sole member, returns the combined district to a general health district under R.C. 3709.01.
6. If the answer to question five is in the affirmative, and if the contract creating the combined general health district is otherwise silent on the issue, whether the real property owned by a former combined general health district formed under R.C. 3709.07 becomes the property of the general health district by operation of law.
7. If the answer to question six is in the affirmative, whether a board of county commissioners is responsible, pursuant to R.C. 3709.34 or otherwise, to provide quarters to a general health district when the general health district has acquired and owns real property which it has been using for its operations but then voluntarily divests itself of the ownership of that property.
8. Whether the answer to question seven would be changed or modified if, after divesting itself of the real property through a sale, the general health district forwards or donates the proceeds of the sale of the property to the board of county commissioners.

Combined General Health Districts

Pursuant to statute, the State of Ohio is divided into city health districts and general health districts. R.C. 3709.01. Health districts are independent political subdivisions and are not part of a county or municipal government. *See* 2008 Op. Att’y Gen. No. 2008-026, at 2-280; 1991 Op. Att’y Gen. No. 91-016, at 2-80; 1980 Op. Att’y Gen. No. 80-087, at 2-342; 1974 Op.

Att’y Gen. No. 74-032, at 2-144; 1946 Op. Att’y Gen. No. 899, p. 289. Health districts also may unite with one another in various ways. *See* R.C. 3709.051 (authorizing merger of two or more contiguous city health districts); R.C. 3709.07 (authorizing merger of a general health district with two or more city health districts); R.C. 3709.10 (authorizing merger of two or more contiguous, but not to exceed five, general health districts); *see also* 1991 Op. Att’y Gen. No. 91-016, at 2-80.

The Combined District was formed pursuant to R.C. 3709.07, which states, in pertinent part, “that one or more city health districts [may] unite with a general health district in the formation of a single district.” Initially, the “district advisory council” for the general health district and the “legislative authority” for each city must “vote on the question of union.” R.C. 3709.07. Upon an affirmative majority vote by each, “the chair of the council and the chief executive of each city shall enter *into a contract* for the administration of health affairs in the combined district.” *Id.* (emphasis added). A combined district formed pursuant to R.C. 3709.07 “shall constitute a general health district.” *Id.*; *see also* 1955 Op. Att’y Gen. No. 5699, p. 434, at 439 (“the union of a city health district with a general health district . . . results in the formation of a new general health district and a consequent dissolution of the former city and general health districts”). Such health districts are commonly referred to as combined general health districts. *See* 1991 Op. Att’y Gen. No. 91-016, at 2-80 (“[t]he term ‘combined general health district’ is used . . . to refer to a district formed” pursuant to R.C. 3709.07); *see also* 2000 Op. Att’y Gen. No. 2000-048, at 2-293 (using the term “combined general health district”); 1996 Op. Att’y Gen. No. 96-016, at 2-63 n.1 (referring to a “combined general health district created under R.C. 3709.07”).

Obligation to Provide Suitable Quarters to a Combined General Health District

Your inquiries regarding a board of county commissioners’ obligation to provide quarters to a combined general health district are prompted by R.C. 3709.34, which 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.” While the statute uses the term “may,” a long line of Attorney General opinions have concluded that R.C. 3709.34 imposes a mandatory duty on a board of county commissioners to furnish suitable quarters to a general health district. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-016, at 2-62 and 2-63; 1989 Op. Att’y Gen. No. 89-038, at 2-167; 1985 Op. Att’y Gen. No. 85-003, at 2-7 and 2-8.

A board of county commissioners’ obligation to provide suitable quarters to a combined general health district has also been the subject of a long line of Attorney General opinions. In 1991 Op. Att’y Gen. No. 91-016 (syllabus, paragraph 2), the Attorney General concluded:

Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a city may, but is not required to, furnish office space for a combined general health district created under R.C. 3709.07. (1983 Op. Att’y Gen. No. 83-081, syllabus, paragraph 1, approved and followed.)

The basis for this conclusion is derived from the language of R.C. 3709.34. On this point, 1954 Op. Att’y Gen. No. 3499, p. 47, at 49, states:

. . . As a matter of first impression it might be concluded that the obligation to house a combined general health district devolves upon the county commissioners since such a district has “***jurisdiction over all or any part of such county***.” However, by the same token, the district also has jurisdiction over all of the city, in this instance, and the statute is equally susceptible of the construction that the duty to provide quarters rests with the legislative authority of such city.

. . . .

The fact that the legislature has not seen fit to provide specifically for such a case [*i.e.*, a combined general health district] indicates strongly to me that it was intended that the matter of quarters and the rental expense thereof should be determined by the mutual agreement required upon the union of a city health district and the general health district.

A number of Attorney General opinions have either expressly or implicitly approved of the reasoning in 1954 Op. Att’y Gen. No. 3499, p. 47. *See* 1996 Op. Att’y Gen. No. 96-016, at 2-63 n.1 (“[a]n exception to the construction of R.C. 3709.34 as mandatory has been recognized when the health district in question is a combined general health district created under R.C. 3709.07, for the statute does not indicate whether the county or a city should bear the responsibility of providing office space in such circumstances” (citations omitted)); 1991 Op. Att’y Gen. No. 91-016, at 2-81 (“[t]he conclusion that R.C. 3709.34 does not impose a mandate upon either a county or a city in the case of a combined general health district created under R.C. 3709.07 was followed in Op. No. 83-081 and was referenced in Op. No. 85-003 at 2-8 n.1 and in 1989 Op. Att’y Gen. No. 89-038 at 2-167 n.1”).

We see no reason to depart from the long recognized distinction in the treatment of combined general health districts and general health districts as to this matter. Accordingly, a board of county commissioners or the legislative authority of a city may, but is not required to, furnish office space to a combined general health district.¹ Given this conclusion, we need not address your second and third questions.

¹ Numerous Attorney General opinions have also recognized the inherent authority of combined general health districts to treat the cost of renting or leasing office space as an operating expense, to be apportioned among the participating members like other annual expenses as provided in the contract creating the district. *See* 1996 Op. Att’y Gen. No. 96-016, at 2-63 n.1; 1991 Op. Att’y Gen. No. 91-016 (syllabus, paragraph 3); 1985 Op. Att’y Gen. No. 85-003, at 2-8 n.1; 1983 Op. Att’y Gen. No. 83-081 (syllabus, paragraph 2); 1976 Op. Att’y Gen. No. 76-066 (syllabus); 1954 Op. Att’y Gen. No. 3499, p. 47 (syllabus). Nothing in this opinion should be construed as disturbing this line of authority.

Withdrawal of Contracting Cities From a Combined General Health District

Your fourth and fifth questions relate to the withdrawal of contracting cities from a combined general health district. Before answering these questions, though, we should address a city's authority to withdraw from a combined general health district formed under R.C. 3709.07.

Prior opinions of the Attorney General have concluded that the ability to withdraw from or terminate a regional or district entity may be constrained by statute. *See* 1994 Op. Att'y Gen. No. 94-068 (syllabus, paragraph 2) ("R.C. 713.21 does not authorize a member of a regional planning commission to withdraw from the commission, but it does permit the dissolution or termination of the commission upon such terms as are agreed by the members of the commission"); 1972 Op. Att'y Gen. No. 72-097, at 2-390 (the language of R.C. 343.02 "seems to indicate clearly that, once having been included in a [garbage and refuse] disposal district, a municipal corporation may only withdraw after the disposal facility has been paid for in full"). Such is not the case here. Nothing in the Revised Code limits a city's ability to withdraw from a combined general health district formed under R.C. 3709.07.

Indeed, the provisions in R.C. Chapter 3709 regarding the creation of a combined general health district are permissive, not mandatory. Insofar as a city is, in the first instance, not required to unite a city health district with a general health district to form a combined general health district under R.C. 3709.07, it logically follows that, in the absence of any statutory prohibition, a city may exercise its discretionary authority to terminate its membership in the district. *See, e.g.*, 1987 Op. Att'y Gen. No. 87-083, at 2-560 (board of county commissioners could exercise its discretion in deciding to divest itself of responsibility for a previously established county sewer district because the statutory scheme made the district's formation and operation a permissive venture).

Further, as explained above, a combined general health district is created through a contract. R.C. 3709.07. The power to enter into a contract encompasses the authority to include within the contract such terms or provisions as are reasonably necessary to advance the contract's purposes. 2005 Op. Att'y Gen. No. 2005-013, at 2-128; 1977 Op. Att'y Gen. No. 77-048, at 2-170. Moreover, the contracts of governmental entities are governed by the same legal principles as apply to contracts between individuals unless state law provides otherwise. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-076, at 2-371. Because no statute limits the terms that may be a part of a contract to form a combined general health district, the parties may include in the contract those terms they believe are reasonably related to the contract's purpose.

When political subdivisions contract to create a regional or district entity, it seems prudent and reasonable for the subdivisions to include terms in the contract that authorize a subdivision to withdraw from or terminate its participation in the larger entity. *See generally* 1955 Op. Att'y Gen. No. 5699, p. 434, at 440 ("it is common practice to include in [a] contract of union [entered into under R.C. 3709.07] a provision limiting the duration of the contract to a definite period. I perceive nothing improper in such a provision"). Therefore, given the contractual powers bestowed upon the parties to a contract to form a combined general health

district pursuant to R.C. 3709.07, it follows that the parties may include terms in the contract that authorize a member city to withdraw from the combined general health district. Indeed, the contract creating the Combined District, a copy of which accompanied your opinion request, states in relevant part: “The City of Lancaster and/or City of Pickerington and/or District Advisory Council may individually terminate said contract upon giving written notice of intention to terminate to the other parties hereto.”

Let us now turn to your fourth question, which asks whether a combined general health district formed under R.C. 3709.07 by the union of two or more city health districts and a general health district still exists when one, but not all, of the contracting cities withdraws from the combined district. Neither R.C. 3709.07 nor any other provision in R.C. Chapter 3709 addresses the status of a combined general health district when one of the contracting cities withdraws from the combined district. R.C. 3709.07, however, expressly authorizes a combined general health district to be formed of a general health district and a single city health district. *See* R.C. 3709.07 (referring to “one or more city health districts” uniting with a general health district to form a single district); 1991 Op. Att’y Gen. No. 91-016 (syllabus, paragraph 1) (stating a combined general health district may be created by the union of a general health district and “one or more city health districts”). The reasonable inference from this authorization is that a combined general health district formed of multiple city health districts continues to exist notwithstanding a city’s withdrawal from the district, provided at least one other city remains a part of the combined district. Thus, a combined general health district formed under R.C. 3709.07 by the union of two or more city health districts and a general health district can continue to exist when one, but not all, of the contracting cities withdraws from the combined general health district.

As noted above, the contract creating the Combined District provides that Pickerington “may individually terminate” its membership in the Combined District. In this instance, therefore, the Combined District continues to exist as a combined general health district under R.C. 3709.07, notwithstanding Pickerington’s withdrawal from the Combined District.²

² The formal opinion process is not a vehicle through which contractual disputes may be resolved. *See* 1983 Op. Att’y Gen. No. 83-087, at 2-342 (“[t]he determination of particular parties’ rights [under a contract] is a matter which falls within the jurisdiction of the judiciary, which I, as an executive officer, am unable and unwilling to usurp”). The present situation, however, does not require us to select among competing claims under a contract. Instead, we are offering an opinion on the legal implications of a statute when considered in light of clear and unambiguous contractual language. *See* 2000 Op. Att’y Gen. No. 2000-048, at 2-293 n.1 (concluding that it was proper to issue an opinion discussing the enforceability of a contract to purchase real property entered into by a general health district because the application of the law to the contract was “virtually axiomatic” and the discussion was “intended merely to guide the general health district”).

Your fifth question asks whether the withdrawal of all the city members from a combined general health district, leaving the original general health district as the sole member, returns the combined district to a general health district under R.C. 3709.01. The critical formative act for a combined general health district is the execution of a contract between the chair of the general health district's advisory council and the chief executive of each city. *See* R.C. 3709.07 (“the chair of the [district advisory] council and the chief executive of each city shall enter into a contract for the administration of health affairs in the combined district”); 1976 Op. Att’y Gen. No.76-066, at 2-221 (“[a] combined district is *formed by a contract* . . . between the district advisory council of the general health district and the legislative authorities of the cities” (emphasis added)). Under R.C. 3709.07, therefore, a combined general health district cannot be formed by a single general health district. From this it follows that when all the participating cities withdraw from a combined general health district, there is no such district as understood by R.C. 3709.07.

Further, it is axiomatic under the common law that a party cannot contract with itself. *See, e.g., Saum v. Moenter*, 101 Ohio App. 3d 48, 52, 654 N.E.2d 1333 (Van Wert County 1995) (defining a contract, in part, as an agreement between two or more parties); *Schluppe v. Ohio Department of Administrative Services*, 78 Ohio App. 3d 626, 630, 605 N.E.2d 987 (Franklin County 1992) (same); *cf.* R.C. 343.012(B) (a joint solid waste management district, which is formed through contract, will be dissolved if “the withdrawal of one or more counties would leave only one county participating in a joint district”). Thus, at least two contracting parties are necessary to maintain a combined general health district; the district advisory council for a general health district cannot contract with itself.

In 1955 Op. Att’y Gen. No. 5699, p. 434, the Attorney General addressed the execution and expiration of a contract creating a combined general health district. The opinion concerned a combined general health district formed by the union of the city health district for the City of Lima and the general health district for Allen County. Interpreting R.C. 3709.07, the Attorney General concluded that “the union of a city health district with a general health district . . . results in the formation of a new general health district and a consequent dissolution of the former city and general health districts.” *Id.* at 439. The opinion further addressed “the effect of the union of a city and a general health district upon the district advisory council of the former general health district”—specifically, whether the district advisory council remained in existence. *Id.*

On this issue, 1955 Op. Att’y Gen. No. 5699, p. 434, at 440, concluded as follows:

Section 3709.03, Revised Code, provides for the creation of a district advisory council for each general health district, to be composed of the chief executive of each municipal corporation and the chairman of the board of township trustees of each township within the health district. . . .

It is obvious that where a combined general health district has been created as in the instant case there would be no occasion for a district advisory council to exercise certain of these functions. However, such council is clearly created by the terms of the statute itself and there is nothing in Section 3709.07,

Revised Code, relative to the union of a general and a city health district, which purports to destroy the agency thus created. It would seem, therefore, that the functions of such council are temporarily suspended by the contract of union.

In this connection I am informed that it is common practice to include in the contract of union a provision limiting the duration of the contract to a definite period. I perceive nothing improper in such provision and it would seem that in such a case *the district council would be in a position, at the expiration of the term thus designated, to consider whether a new contract of union would be negotiated or whether operation as a separate general health district would be resumed.* (Emphasis added.)

See also id. (syllabus, paragraph 3) (upon the expiration of the term of a contract creating a combined general health district, the district advisory council may “either extend or renegotiate such contract, or may elect again to designate a board of health to operate a separate general health district”).

In 2001, the General Assembly amended R.C. 3709.02 and 3709.03 to provide that the district advisory council is to appoint only four of the five general health district board members, with the fifth member coming from the health district licensing council created under R.C. 3709.41. *See* 2001-2002 Ohio Laws, Part I, 1099 (Am. Sub. S.B. 136, eff. Nov. 21, 2001).³ This amendment, however, does not materially affect the analysis in 1955 Op. Att’y Gen. No. 5699, p. 434, with which we are in complete agreement. We also see no reasonable basis to distinguish between a contract terminating because of the expiration of its term and a contract

³ R.C. 3709.02(A) states, in part, that each general health district shall have “a board of health consisting of five members to be appointed as provided in section 3709.03 and 3709.41 of the Revised Code.” R.C. 3709.03(B) states, in part, that the “district advisory council shall appoint four members of the board of health, and the remaining member shall be appointed by the health district licensing council established under section 3709.41 of the Revised Code.” R.C. 3709.41, which was enacted in 2001-2002 Ohio Laws, Part I, 1099 (Am. Sub. S.B. 136, eff. Nov. 21, 2001), states, in relevant part:

(A) There is hereby created in each city and in each general health district a health district licensing council, to be appointed by the entity that has responsibility for appointing the board of health in the health district.

....

(C) Pursuant to sections 3709.03, 3709.05, and 3709.07 of the Revised Code, the health district licensing council shall appoint one of its members to serve as a member of the board of health.

Since the district advisory council is the “entity that has responsibility” for appointing general health district board members, R.C. 3709.41(A), it has the authority to designate the members of the district licensing council.

terminating because all the contracting parties, save one, exercise their withdrawal rights under the contract. Therefore, upon the withdrawal of all contracting cities from a combined general health district formed under R.C. 3709.07, the combined district dissolves, and the district advisory council for the former general health district may either undertake the steps necessary to reconstitute a board of health to resume operations as a general health district or execute a new contract of union under either R.C. 3709.07 or R.C. 3709.10.⁴

Real Property Owned by a Combined General Health District

In your sixth question you ask, if the answer to question five is in the affirmative, and if the contract creating the combined general health district is otherwise silent on the issue, whether the real property owned by the former combined general health district becomes the property of the general health district by operation of law. As just discussed, we have answered your fifth question in the negative. The withdrawal of all contracting cities from a combined general health district causes the combined general health district to dissolve; it does not revert to a general health district. Instead, the district advisory council for the former general health district must either undertake the steps necessary to reconstitute a board of health or execute a new contract of union.

Nothing in the Revised Code indicates that a general health district that resumes operations is the statutory successor of a dissolved combined general health district or directs the disposition of a dissolved combined general health district's property. *Cf.* R.C. 306.01(B) (stating that the board of county commissioners "shall assume all contracts, property, and debts" of a dissolved transit board); R.C. 3735.39 (stating that the director of development "shall take possession and dispose of all property" belonging to a dissolved metropolitan housing authority). Thus, real property owned by a combined general health district does not transfer by operation of law to a general health district that resumes operations after the dissolution of the combined general health district.

The absence of specific guidance in the Revised Code regarding the status of a combined general health district's property could cause practical difficulties if a district dissolves without having made arrangements for the disposition of its real property. The most straightforward way of avoiding this problem is through R.C. 3707.55(A), which states that 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." (Emphasis added.) The Attorney General has previously concluded that the authority in R.C. 3707.55 extends to combined general health

⁴ As noted previously, a general health district may unite with other health districts in various combinations. *See* R.C. 3709.07 (general health district can unite with one or more city health districts); R.C. 3709.10 (two or more contiguous general health districts, not to exceed five, may unite to form a single district). In both instances, it is the district advisory council that votes as the representative of the general health district on the question of union. *See* R.C. 3709.07; R.C. 3709.10.

districts. 2000 Op. Att’y Gen. No. 2000-048 (syllabus, paragraph 1) (“[t]he board of health of a combined general health district has authority pursuant to R.C. 3707.55 . . . to purchase real property in order to provide office space for the health district”); *see also* R.C. 3709.07 (stating that a combined district shall be governed by either a board of health or health department having “all the powers granted to . . . the board of health of a general health district”). Thus, the governing authority of a combined general health district, be it a board of health or health department, has authority, pursuant to R.C. 3707.55, to enter into a contract to sell real property owned by the combined district.

You indicated the Miller Building was conveyed directly by the Fairfield County Board of Commissioners to the Combined District. Consistent with R.C. 3709.07, the contract creating the Combined District states the District “shall be administered by a Combined Board of Health.” Thus, the Combined Board of Health clearly has the authority to convey the Miller Building prior to January 1, 2011, when Lancaster’s notice of termination becomes effective.

As also explained above, the parties to a contract creating a combined general health district may include in the contract terms authorizing a party to withdraw from the district. Implicit within this authority is the ability to set preconditions for withdrawal from a combined general health district. Thus, the contracting parties may include, among other conditions, a provision that, if the withdrawal of a contracting member would result in the dissolution of the combined general health district, the withdrawal cannot be effected until the district’s real property is sold or otherwise disposed of. *Cf.* R.C. 343.012(B) (in conjunction with the dissolution of a joint solid waste management district, the “board of directors *shall* ascertain, apportion, and order a final division of the funds on hand, credits, and real and personal property of the district” (emphasis added)). If a combined general health district has already been established, the contract can be amended to include such a provision. *See* 1991 Op. Att’y Gen. No. 91-016, at 2-82 (a contract creating a combined general health district is “subject to modification by agreement of the parties”); 1980 Op. Att’y Gen. No. 80-048 (syllabus, paragraph 1) (“[a] district advisory council of a general health district may enter into a new contract with member cities in order to change the terms of office of its members”). Accordingly, the remaining parties to the contract creating the Combined District have the authority to amend the contract prior to January 1, 2011 and to condition the dissolution of the Combined District on the disposition of the Miller Building.⁵

Obligation to Provide Suitable Quarters After The Dissolution of a Combined General Health District

Your seventh question asks, if the answer to question six is in the affirmative, whether a board of county commissioners is responsible, pursuant to R.C. 3709.34 or otherwise, to provide quarters to a general health district when the general health district has acquired and owns real

⁵ We express no opinion regarding the treatment of the Miller Building should either the Combined Board of Health or the contracting parties fail to act prior to January 1, 2011.

property which it has been using for its operations but then voluntarily divests itself of the ownership of that property. Your eighth question asks whether the answer to question seven would be changed or modified if, after divesting itself of the real property through a sale, the general health district forwards or donates the proceeds of the sale of the property to the board of county commissioners.

Since we answered your sixth question in the negative, your seventh and eighth questions are moot. However, we will briefly address the related issue of a board of county commissioners' obligation to provide suitable quarters to a general health district that resumes operations after the dissolution of a combined general health district.

As explained above, R.C. 3709.34 does not require a board of county commissioners to furnish office space to a combined general health district formed under R.C. 3709.07, but R.C. 3709.34 does obligate the commissioners to provide suitable quarters to a general health district created under R.C. 3709.01. Regarding the latter obligation, there is no reasonable basis to distinguish between a general health district that resumes operations after the dissolution of a combined general health district and a general health district which has operated continuously, and nothing in the language of R.C. 3709.34 or any prior Attorney General opinion indicates otherwise. Thus, the general rule that a board of county commissioners has a mandatory duty to provide suitable quarters to a general health district applies when a general health district resumes operations after the dissolution of a combined general health district.

Further, while R.C. 3707.55(B) provides an exception to a board of county commissioners' obligation under R.C. 3709.34, R.C. 3707.55(B) does not apply unless a general health district "acquires, leases, or enters into a contract to purchase or lease real property."⁶ As the Miller Building was deeded directly to the Combined District, the Fairfield County General Health District never acquired the Miller Building for purposes of R.C. 3707.55(B). In such a situation, a board of county commissioners has a mandatory obligation to provide suitable quarters to a general health district that resumes operations after the dissolution of a combined general health district.

Conclusions

In sum, it is my opinion, and you are hereby advised, as follows:

⁶ R.C. 3707.55(B) states:

Notwithstanding anything to the contrary in section 3709.34 of the Revised Code, if a board of health of a general health district acquires, leases, or enters into a contract to purchase or lease real property under this section, the board of county commissioners has no obligation to pay for or reimburse the general health district for such property, or to furnish suitable quarters to the general health district.

1. Pursuant to R.C. 3709.34, a board of county commissioners or the legislative authority of a city may, but is not required to, furnish quarters to a combined general health district created under R.C. 3709.07. (1991 Op. Att’y Gen. No. 91-016 (syllabus, paragraph 2) and 1983 Op. Att’y Gen. No. 83-081 (syllabus, paragraph 1), approved and followed.)
2. A combined general health district formed under R.C. 3709.07 by the union of two or more city health districts and a general health district can continue to exist when one, but not all, of the contracting cities withdraws from the combined general health district.
3. Upon the withdrawal of all contracting cities from a combined general health district formed under R.C. 3709.07, the combined general health district dissolves, and the district advisory council for the former general health district may either undertake the steps necessary to reconstitute a board of health to resume operations as a general health district or execute a new contract of union under either R.C. 3709.07 or R.C. 3709.10.
4. Real property owned by a combined general health district formed under R.C. 3709.07 does not transfer by operation of law to a general health district that resumes operations after the dissolution of the combined general health district.
5. The governing authority of a combined general health district has the authority, pursuant to R.C. 3707.55, to enter into a contract to sell real property owned by the combined general health district.
6. A board of county commissioners has a mandatory obligation under R.C. 3709.34 to provide suitable quarters to a general health district that has never acquired real property and that resumes operations after the dissolution of a combined general health district formed under R.C. 3709.07.

Respectfully,



RICHARD CORDRAY
Ohio Attorney General