Note from the Attorney General's Office:

1980 Op. Att'y Gen. No. 80-087 was approved and followed by 2017 Op. Att'y Gen. No. 2017-041.

OPINION NO. 80-087

Syllabus:

A board of health of a combined general health district has the authority to determine the fringe benefits, including sick leave, vacation, and overtime, to which its employees are entitled, subject only to R.C. 4111.03 governing compensation for overtime. (1976 Op. Att'y Gen. No. 76-018 overruled.)

To: John S. Cheetwood, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, December 17, 1980

I have before me your request for an opinion concerning salaries and fringe benefits of general health district employees. The general question you pose is "what authority. . .the board of health for [a] combined general health district possess[es] in the area of setting salaries and fringe benefits, including vacation and overtime policies, for its employees."

In order to answer this question it is necessary to consult R.C. Chapter 3709, which establishes health districts in Ohio. R.C. 3709.01 provides that the state shall be divided into health districts. Each city constitutes a "city health district"; the townships and villages in each county constitute a "general health district." The statute further provides for the union of a city health district with a general health district, for the union of several city health districts with a general health district, and for the union of two to five general health districts, the resulting district in each case constituting a general health district. The resulting district is governed by a board of health or health department which has "all the powers granted to, and [shall] perform all the duties required of, the board of health of a general health district." R.C. 3709.07; see R.C. 3709.071; R.C. 3709.10. It is clear, therefore, that a statute which applies to general health districts is equally applicable to health districts formed in accordance with R.C. 3709.07, R.C. 3709.071, and R.C. 3709.10.

Several sections of the Revised Code, 3709.13, 3709.15, and 3709.16, govern the board's power to appoint its own employees. R.C. 3709.15 specifically provides for the appointment of sanitarians and public health nurses. R.C. 3709.13 states, in part:

> In any general health district the board of health may, upon the recommendation of the health commissioner, appoint for full or part time service a public health nurse and a clerk and such additional public health nurses, physicians, and other persons as are necessary for the proper conduct of its work. . . . Employees of the board, other than the commissioner, shall be in the classified service of the state, and all employees of the board may be removed for cause by a majority of the board. (Emphasis added.)
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> The board of health of a city or general health district shall determine the duties and fix the salaries of its employees.
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> The board of health of any health district may procure and pay all or any part of the cost of group life, hospitalization, surgical, major medical, sickness and accident insurance, or a combination of any of the foregoing types of insurance or coverage, for the health commissioner, the employees of the health district, and their immediate dependents, from the funds or budgets from which said health commissioner or employees are compensated for services, issued by an insurance company, hospital service association, or nonprofit medical care corporation duly authorized to do business in this state.
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> Notwithstanding section 3917.01 of the Revised Code, the board of health of any health district may purchase group life insurance authorized by this section by reason of payment of premiums therefor by the board from its funds, and such group life insurance may be issued and purchased if otherwise consistent with sections 3917.01 to 3917.06 of the Revised Code. (Emphasis added.)

These provisions clearly state that the board of health has the power to appoint its own employees, to fix their salaries, and to purchase health and life insurance for those employees. R.C. 3709.13 also places general health district employees in the classified service of the state.

In Ebert v. Stark County Bd. of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980), the court was faced with the question of how R.C. 124.38 applies to employees of a county board of mental retardation. The court concluded that because the employing unit is expressly empowered by statute to "employ" such personnel as necessary, it also has the power to fix the compensation of its employees. According to the court, the power to fix compensation obviously includes the power to fix other fringe benefits, including sick leave. The court stated in Ebert that, since R.C. 124.38 sets a guaranteed, minimum benefit level, a county board of mental retardation may, in the absence of any constricting statutory provision, provide sick leave benefits in excess of those provided in R.C. 124.38.

I apply the same analysis to a board of health of a general health district. Such a board has the power to appoint its own employees, fix their duties and set their salaries. R.C. 3709.13; R.C. 3709.15; R.C. 3709.16. For purposes of this analysis, I believe these powers are equivalent to a board of mental retardation's authority to "employ," as discussed in Ebert. I conclude, therefore, that the board of health of a general health district also possesses the authority to determine the type and amount of fringe benefits—including sick leave, vacation, and overtime—to which its employees are entitled as part of their compensation, subject only to any limits imposed by statute. See, e.g., State ex rel. Parsons v. Ferguson, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692, 694 (1976) ("payments for fringe benefits may not

constitute 'salary,' in the strictest sense of that word, but they are compensation"); State ex rel. Artmayer v. Board of Trustees, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) ("salary" and "compensation" are synonymous as used in Ohio Const. art. II, §20).

R.C. 3709.13 places general health district employees in the classified service of the state. R.C. 124.01 states that, as used in R.C. Chapter 124:

> (A) "Civil service" includes all offices and positions of trust or employment in the service of the state and the. . .general health districts. . .thereof.
> (B) "State service" includes all such offices and positions in the service of the state. . .and general health districts thereof. . . .
> (C) "Classified service" means the competitive classified civil service of the state [and] . . .general health districts. . . .

Within R.C. Chapter 124, there are several references to general health districts as employers apart from the state. E.g., R.C. 124.11(A) and (B) ("[t] he civil service of the state and the. . .general health districts. . .thereof shall be divided into the unclassified service and the classified service"); R.C. 124.271 ("[a] ny employee in the classified service of the state or any. . .general health district. . .who is appointed provisionally. . .becomes a permanent appointee in the classified service at the conclusion of such two year period"); R.C. 124.34 ("[t] he tenure of every officer or employee in the classified service of the state and the. . .general health districts. . .thereof. . .shall be during good behavior and efficient service. . ."). It is clear, therefore, that, for purposes of R.C. Chapter 124, a general health district is an employer separate from the state and its other political subdivisions.

The provision in R.C. 3709.13 stating that general health district employees are in "the classified service of the state" merely places such employees within the general civil service framework of R.C. Chapter 124, but does not make them employees of the state. The more specific provisions of R.C. Chapter 124 govern the precise nature of the public employment of general health district employees.

Each section of R.C. Chapter 124 specifies the types of employees to whom the section applies. As employees in the classified service of the state, general health district employees are protected by the provisions regarding transfers. R.C. 124.33. As employees in the classified service generally, general health district employees fall within the provisions of R.C. Chapter 124 relating to appointment, temporary and exceptional appointment, promotion, transfer, reinstatement, layoff and retention points. R.C. 124.27; R.C. 124.30; R.C. 124.31; R.C. 124.32. Employees in the classified service of the state and the general health districts thereof come within the provisions relating to provisional appointment, tenure, reduction, suspension and removal. R.C. 124.271; R.C. 124.34. Because the foregoing sections apply to general health district employees, the general health district board is limited by these provisions in fixing the compensation of its employees; the board must grant its employees the minimum protections afforded by the applicable statutes.

Sick leave benefits of public employees are governed by R.C. 124.38. In 1976 Op. Att'y Gen. No. 76-018 I concluded that because employees of a general health district are in the classified service of the state, the sick leave provisions of R.C. 124.38 apply to those employees. Upon reconsideration, it is my opinion that, although the legislature may have intended to include general health district employees within the group of employees entitled to the protections of R.C. Chapter 124, the specific language of R.C. 124.38 does not include such employees.

R.C. 124.38 provides sick leave benefits for "[e] ach employee, whose salary or wage is paid in whole or in part by the state, each employee in the various offices of the county, municipal, and civil service township service, and each employee of any board of education for whom sick leave is not provided by [R.C. 3319.141] ." It is obvious that general health district employees are not employed in the civil

service township service[1] nor by the board of education. It has also been clearly established that general health districts are not part of municipal or county government. 1965 Op. Att'y Gen. No. 65-121; 1960 Op. Att'y Gen. No. 1302, p. 298. General health districts are, rather, distinct political subdivisions of the state,[2] and, for purposes of R.C. Chapter 124, are distinct employers, apart from the state. Whether R.C. 124.38 applies to general health district employees depends, therefore, on whether such employees are paid in whole or in part by the state.

In determining whether combined general health district employees are paid in whole or in part by the state, it is necessary to examine the funding of such districts. R.C. 3709.28 states that the funding of a general health district is provided primarily by the townships and municipal corporations composing the health district. According to R.C. 3709.07 and 3709.071, when health districts combine to form a single general health district, the combining districts enter into a contract which states the proportion of the expenses of the board of health or health department to be paid by the city or cities and by the original general health district. R.C. 3709.10 provides that when general health districts combine in accordance with that section, "the members of the budget commissions of the counties constituting the district shall sit as a joint board for considering and acting on [the combined district's] budget." R.C. 3709.32 provides a state subsidy to boards of health or health departments which comply with the regulations of the public health council. See generally 3 Ohio Admin. Code 3701-1-04. This state subsidy is not, however, payment in whole or in part by the state to general health district employees.[3]

The major sources of funding for combined general health districts are the component city or cities and the original general health district or districts. Any subsidy from the state goes to the general fund of the health district and not directly to health district employees; the state subsidy is based on expenses the board has already paid and goes to the general fund of the health district after its employees have been paid. See R.C. 3709.32; 1960 Op. Att'y Gen. No. 1302, p. 298. It is clear, therefore, that general health district employees are not paid in whole or in part by the state. Because general health district employees are not covered by the provisions of R.C. 124.38, that section does not limit the board's power to determine the sick leave benefits to which its employees are entitled. See Ebert v. Stark County Bd. of Mental Retardation, 63 Ohio St.2d 31, 406 N.E.2d 1098 (1980).

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[1]R.C. 3709.13.

[2]See 1972 Op. Att'y Gen. No. 72-035 ("[a] political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority"). The authority of a general health district is neither city-wide, nor county-wide. R.C. 3709.01. It is, therefore, apparent that general health districts are properly designated as political subdivisions of the state, rather than as offices of the county or municipal service. See 1975 Op. Att'y Gen. No. 75-036.

[3]See 1960 Op. Att'y Gen. No. 1302, p. 298. As in effect in 1960, R.C. 3709.32 based the state subsidy to a general health district on the amount paid by the district to the health commissioner, public health nurse, and clerk. One of my predecessors noted that, although the amount of state subsidy was based on the amount paid to the commissioner, nurse, and clerk, it was paid to the general fund of the health district after such employees were paid, and was not distributed directly to the employees. My predecessor concluded that such payments, therefore, did not constitute payments to the employees in whole or in part by the state. Currently, R.C. 3709.32 (1975-1976 Ohio Laws 593 (Am. S.B. 200, eff. Aug. 13, 1976)) makes no reference to salaries as the basis for computing the amount of state subsidy to a health district. The deletion of any reference to salaries indicates even more strongly that the state subsidy of a general health district pursuant to R.C. 3709.32 is not payment to health district employees in whole or in part by the state.

Vacation leave benefits for public employees are governed by R.C. 121.161, which applies to full-time state employees, and R.C. 325.19, which applies to county employees. Because a general health district is not part of county service, general health district employees are not eligible for vacation benefits under R.C. 325.19. 1965 Op. Att'y Gen. No. 65-121. R.C. 121.161, however, provides vacation leave benefits for "each full-time state employee," a term that is not defined by statute.

Although R.C. 3709.13 states that general health district employees "shall be in the classified service of the state," they are not necessarily "state employees" for purposes of R.C. 121.161. As I stated previously, I believe that, in using the above language of R.C. 3709.13, the legislature merely intended to indicate that general health district employees are within the civil service scheme of R.C. Chapter 124. General health districts are listed as employers apart from the state within R.C. Chapter 124. E.g., R.C. 124.11(A) and (B); R.C. 124.271; R.C. 124.34. General health districts are political subdivisions of the state, not state agencies. See 1975 Op. Att'y Gen. No. 75-036. See also 1972 Op. Att'y Gen. No. 72-035. Employees of a general health district are not paid either in whole or in part by the state. See 1960 Op. Att'y Gen. No. 1302, p. 298. It is clear, therefore, that general health district employees are employed by the general health district, as an entity in itself, and not by the state.

General health district employees are not then entitled to the vacation leave benefits provided by R.C. 121.161. The board, being empowered to set the fringe benefits to which its employees are entitled, may determine the vacation leave policy for its employees without regard to the provisions of R.C. 325.19 and R.C. 121.61.

R.C. 124.18 and R.C. 4111.03 provide overtime policies for certain employees. R.C. 124.18 provides the standard work week and overtime policy for "all employees whose salary or wage is paid in whole or in part by the state." General health district employees, not being paid in whole or in part by the state, are not covered by the provisions of R.C. 124.18.

R.C. 4111.03 reads, in pertinent part, as follows:

> (A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 207, 213, as amended.

R.C. 4111.01(D) includes "the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities" as employers covered by R.C. 4111.03. General health districts, as political subdivisions of the state, are clearly employers within the meaning of R.C. 4111.03.

R.C. 4111.01(E) defines "employee" generally as "any individual employed by an employer," with several exceptions. Assuming that general health district employees do not fall within any of the exceptions to the definition of "employee," I find that R.C. 4111.03 provides the wage rate for overtime to which general health district employees are entitled. I note, however, that R.C. 4111.03 merely provides a minimum overtime benefit which general health districts must pay their employees. 1975 Op. Att'y Gen. No. 75-078 (in discussing the application of R.C. 4111.03 to county employees I stated that, "overtime may also be paid for extra hours worked where a standard work week of less than 40 hours has been established"). See also Ebert v. Stark County Bd. of Mental Retardation, 63 Ohio St.2d 31, 406 N.E.2d 1098 (1980). Compensation for overtime is, therefore, a fringe benefit which may be determined by the board of health of a general health district for its employees, without regard to the provisions of R.C. 124.18, but subject to the provisions of R.C. 4111.03.

It is, therefore, my opinion and you are advised, that a board of health of a combined general health district has the authority to determine the fringe benefits, including sick leave, vacation, and overtime, to which its employees are entitled, subject only to R.C. 4111.03 governing compensation for overtime. (1976 Op. Att'y Gen. No. 76-018 overruled.)