October 18, 1999

OPINION NO: 99-052

The Honorable C. Keith Plummer
Guernsey County Prosecuting Attorney
139 Court House Square
P.O. Box 640
Cambridge, Ohio 43725-0640

Dear Prosecutor Plummer:

We have received your request for an opinion concerning the appointment of an individual to fill the position of health commissioner of a combined general health district. Your question is whether the board of health may fill the position of health commissioner with a candidate who possesses a master's degree of public administration or a master's degree in business administration.

Your request has arisen because the health commissioner of Guernsey County is scheduled to retire at the end of 1999. We are informed that the board of health of the combined general health district has been reviewing applications of individuals who have applied for the position of health commissioner and that questions have arisen concerning the educational requirements imposed by R.C. 3709.11.

Let us begin our analysis of your question with an examination of the relevant statutory language. R.C. 3709.11 provides that the board of health of a general health district, including a combined general health district, *see* R.C. 3709.01; R.C. 3709.07, shall appoint a health commissioner for a period of up to five years. The statute prescribes the qualifications of the health commissioner as follows:

> The person appointed as commissioner *shall be* a licensed physician, licensed dentist, a licensed veterinarian, licensed podiatrist, licensed chiropractor, or the *holder of a master's degree in public health or an equivalent master's degree in a related health field as determined by the members of the board of health* in a general health district.

R.C. 3709.11 (emphasis added).

Use of the word "shall" indicates that the qualifications established by statute are mandatory. *See Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1); 1996 Op. Att'y Gen. No. 96-039. Therefore, to be appointed commissioner of a general health district, a person must be a licensed physician, licensed dentist, licensed veterinarian, licensed podiatrist, licensed chiropractor, or the holder of a master's degree in public health or an equivalent master's degree in a related health field as determined by the members of the board of health in a general health district.

The statute grants the members of the board of health authority to determine whether a particular master's degree is "an equivalent master's degree in a related health field." R.C. 3709.11; *see* 1996 Op. Att'y Gen. No. 96-039. However, if an individual does not hold such a degree or have any of the other qualifications listed in R.C. 3709.11, the members of the board of health do not have authority to determine that other educational experience or practical experience qualifies the individual to serve as health commissioner. 1996 Op. Att'y Gen. No. 96-039 (syllabus, paragraph 2).

The instant question concerns applicants who are not licensed in the health professions listed and do not hold a master's degree in public health. Those applicants are qualified to serve as health commissioner only if they hold "an equivalent master's degree in a related health field as determined by the members of the board of health." R.C. 3709.11. Therefore, we must decide whether the members of the board of health have authority to determine that a master's degree of public administration or a master's degree in business administration is "an equivalent master's degree in a related health field," so as to qualify its holder to serve as health commissioner.

Upon initial consideration, it may appear that degrees in public administration or business administration are not degrees in health fields. Studies in public administration and business administration, by their terms, focus on matters of administration, management, and organization, rather than on substantive health matters. *See Webster's Third New International Dictionary* 28 (unabridged ed. 1993) (defining "administration"). Thus, under common understanding, a master's degree in public administration or business administration is not generally considered a degree in a health field. *See* R.C. 1.42; *see also* 1996 Op. Att'y Gen. No. 96-039, at 2-152 (a person who holds a juris doctor and a bachelor of science in biology does not have the qualifications required by R.C. 3709.11 both because the person does not have a master's degree "and, more decisively, because law cannot reasonably be considered 'a related health field'").

Nonetheless, we are aware that educational institutions organize their programs in different manners. Hence, is possible that a degree that is designated a master's degree in public administration or business administration from one institution may be equivalent to a master's degree in public health from another institution. By statute, the authority to determine whether equivalence exists is vested in the members of the board of health.

The issue of equivalent degrees was considered in 1979 Op. Att'y Gen. No. 79-007. At that time, R.C. 3709.11 permitted the holder of a master's degree in public health to hold the position of health commissioner but contained no mention of any equivalent degrees. The facts there at issue concerned an individual who held a master's degree in public administration and had taken many graduate courses required for a master's degree in public health. The opinion concluded that, because the statute did not allow for an equivalent degree, the master's degree in public administration was not sufficient and there was no need to compare degree programs. The opinion reached this conclusion even though at that time there were apparently no universities in Ohio that offered a master's degree in public health.

Following the issuance of 1979 Op. Att'y Gen. No. 79-007, the General Assembly amended R.C. 3709.11 to allow the acceptance of "an equivalent master's degree in a related health field" as qualification for health commissioner. *See* 1979-1980 Ohio Laws, Part II, 3527 (Am. H.B. 739, eff. Oct. 6, 1980). The timing of the legislation suggests that it was enacted in response to the Attorney General's opinion. The 1979 opinion stated: "Indeed, had [the legislature] intended that a person holding a master's degree in public health, 'or its equivalent,' to [*sic*] be sufficiently qualified to act as commissioner of a general health district, it could have drafted the section accordingly." 1979 Op. Att'y Gen. No. 79-007, at 2-18. It appears that, in amending R.C. 3709.11, the General Assembly did precisely that.

The statutory language that allows for equivalent degrees does not determine decisively whether a master's degree in public administration or business administration can be an equivalent master's degree in a related health field, but it grants the board of health authority to determine that a particular degree does have that equivalence.[1] As the 1979 opinion suggested, the board of health now is empowered to compare degree programs to determine whether a particular master's degree, although not designated a master's degree in public health, is an equivalent master's degree in a related health field. 1979 Op. Att'y Gen. No. 79-007, at 2-18. Pursuant to R.C. 3709.11, therefore, the members of the board of health of a general health district have authority to determine whether a master's degree in public administration or business administration is "an equivalent master's degree in a related health field," so as to qualify its holder to be appointed as health commissioner.

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. To be appointed commissioner of a general health district, a person must be a licensed physician, licensed dentist, licensed veterinarian, licensed podiatrist, licensed chiropractor, or the holder of a master's degree in public health or an equivalent master's degree in a related health field as determined by the members of the board of health in a general health

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[1] R.C. 3709.11 has subsequently been amended, *see* 1989-1990 Ohio Laws, Part II, 2087 (H.B. 55, eff. May 3, 1990), but the language governing equivalent degrees has not been modified.

district. (1996 Op. Att'y Gen. No. 96-039, syllabus, paragraph 1, approved and followed.)

2. Pursuant to R.C. 3709.11, the members of the board of health of a general health district have authority to determine whether a master's degree in public administration or business administration is "an equivalent master's degree in a related health field," so as to qualify its holder to be appointed as health commissioner. (1979 Op. Att'y Gen. No. 79-007 overruled on the basis of statutory amendment.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

October 18, 1999

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SYLLABUS: 99-052

1. To be appointed commissioner of a general health district, a person must be a licensed physician, licensed dentist, licensed veterinarian, licensed podiatrist, licensed chiropractor, or the holder of a master's degree in public health or an equivalent master's degree in a related health field as determined by the members of the board of health in a general health district. (1996 Op. Att'y Gen. No. 96-039, syllabus, paragraph 1, approved and followed.)

2. Pursuant to R.C. 3709.11, the members of the board of health of a general health district have authority to determine whether a master's degree in public administration or business administration is "an equivalent master's degree in a related health field," so as to qualify its holder to be appointed as health commissioner. (1979 Op. Att'y Gen. No. 79-007 overruled on the basis of statutory amendment.)