OPINION NO. 89-032

Syllabus:

1. Pursuant to R.C. 3709.282, the board of health of a city or general health district may receive financial assistance from any source for the purpose of establishing and operating any federal program enacted by the Congress of the United States.

2. Pursuant to R.C. 3709.36 and related provisions, the board of health of a city or general health district has the powers formerly conferred upon the board of health of a municipal corporation by the predecessor provisions of R.C. 9.20 to receive by gift, devise, or bequest moneys, lands, or other properties, for the benefit of the board, and to hold and apply the properties according to the terms of the gift, devise, or bequest.

To: Paul F. Kutscher, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 16, 1989

I have before me your request for an opinion on the question whether the board of health of a combined general health district is authorized to accept gifts that may be donated to it in support of public health programs or goals. The examples enclosed with your letter of request include an industry that wants to

donate moneys to purchase a blood cholesterol measuring device for the board of health and a senior citizen who is charged $5.00 for a flu shot and wishes to pay $10.00 instead.

Provisions governing boards of health appear in R.C. Chapters 3707 and 3709. Pursuant to R.C. 3709.01, each city constitutes a city health district and the townships and villages in each county are combined into a general health district. Various combinations of health districts are authorized by statute. *See* R.C. 3709.01. Health districts are entities separate and distinct from the cities or townships whose territories they encompass. *See, e.g.*, 1975 Op. Att'y Gen. No. 75-036; 1935 Op. Att'y Gen. No. 4567, vol. II, p. 1068. They have only such powers as they are granted by statute. *See, e.g., Brunner v. Rhodes*, 95 Ohio App. 259, 119 N.E.2d 105 (Franklin County 1953).

The facts that you have presented indicate that your question concerns a combined health district created by the union of one or more city health districts and a general health district. *See* R.C. 3709.07. Such a combined health district is administered by the board of health or health department of a city, the board of health of the original general health district, or a combined board of health, as agreed upon in the contract establishing the district. R.C. 3709.07. *See generally* R.C. 3709.05 (recognizing that an administration of public health other than a board of health under R.C. Chapter 3709 may be established by a city under its charter)[1]; *see also* R.C. 3709.34; R.C. 3707.47; 1955 Op. Att'y Gen. No. 5282, p. 272. For purposes of this opinion, I refer to that governing body simply as the "board of health." Pursuant to R.C. 3709.07, a combined health district constitutes a general health district, and its governing body "shall have, within the combined district, all the powers granted to, and perform all the duties required of, the board of health of a general health district." An analysis of the powers of a combined health district is, accordingly, applicable to the boards of health of all general health districts. *See generally* note 1, *supra.*

R.C. 3709.282 specifically addresses the authority of a board of health to receive gifts in connection with federal programs, as follows:

> *The board of health of any city or general health district may* participate in, *receive* or give *financial* and other *assistance*, and cooperate with other agencies or organizations, either private or governmental, *in establishing and operating any federal program* enacted prior to or after November 6, 1969, by the congress of the United States. (Emphasis added.)

The board of health of a city or general health district is, thus, expressly authorized to receive financial assistance in establishing and operating any federal program enacted by the Congress of the United States. *See generally* 1973 Op. Att'y Gen. No. 73-112. There is no statutory restriction on the sources from which such assistance may be accepted. It appears, accordingly, that the board of health of a city or general health district may receive financial assistance for federal programs from any source, including donations from private individuals or public or private entities.[2]

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1 R.C. 301.24 authorizes a charter county to establish a county department or agency for the administration of public health services and provides that, in such circumstances, all health districts within the county shall be abolished and the county shall succeed to the property, rights, and obligations of such districts. *See generally* 1935 Op. Att'y Gen. No. 4567, vol. II, p. 1068. If such a county department or agency were created, the county would, thus, have all the powers of a city or general health district as discussed in this opinion. *See* 1987 Op. Att'y Gen. No. 87-097. This is not, however, the situation involved in your request.

2 I assume, for purposes of this opinion, that any individual or entity seeking to make a gift or provide other financial assistance to a board of health has the authority to make the gift or provide the assistance as desired. *See, e.g.*, R.C. 3709.283.

Apart from R.C. 3709.282, no statute expressly addresses the authority of a board of health to receive gifts.[3] *Cf.* R.C. 9.20 (quoted in note 4, *infra*). Furthermore, no statute expressly authorizes a board of health to hold property. It has, however, long been established that a board of health may, as an incidental power, acquire and hold such property as is necessary to the performance of its statutory duties. 1925 Op. Att'y Gen. No. 2995, p. 761, states, in the syllabus:

> There is no express authority authorizing a district board of health to purchase an automobile for the use of its [employees]. However, where conditions are such that the successful, economical and efficient performance of the board's duties, which are expressly imposed by statute, requires such a purchase, the authority is reasonably implied. Whether or not such a condition exists is a question of fact to be determined in each case, in the discretion of the board.

Accord 1959 Op. Att'y Gen. No. 935, p. 639 (finding that the authority of a board of health of a general health district to provide automobiles was reasonably implied); 1929 Op. Att'y Gen. No. 498, vol. I, p. 752. The following analysis was provided in support of this conclusion:

> There is no express statutory authority granting power to the district board of health to purchase motor vehicles. It therefore becomes essential to consider whether or not the statutes granting the powers of said board will permit of such a construction as to justify the conclusion that such power has been granted by implication. The rule has frequently been announced by the courts of Ohio to the effect that boards of this character have such powers as are expressly granted or clearly implied. See *Board of Education vs. Best*, [52 Ohio St. 138, 152, 39 N.E. 694, 697 (1894)].
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> It will be observed upon consideration of the statutes hereinbefore set forth that the district board of health is charged with a great responsibility in the carrying out of the provisions of the health laws....The statutes do not expressly make any provision for any kind of transportation. However, to take the position that the work of the board of health could not be performed on account of no provision having been made relative to the transportation of [employees] of the board would be an absurdity in derogation of the decisions of the Ohio Courts relating to statutory construction. *It cannot be denied that a board of this character has such incidental powers as are necessary to enable it to perform the duties expressly imposed.* It should be further mentioned in this connection that *the courts have frequently held that in view of the public interest confided in boards of health, laws relating to their powers should be liberally construed in favor of the board.*
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> ...[I]t will be clearly seen that it was contemplated by the legislature that there would be current expenses which the board would have, and for the payment of such provision has been made. The legislature has not attempted to define what would be proper expenses

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3 Certain statutory provisions authorize boards of health to accept moneys for specific purposes. Where the moneys are for services rendered to particular persons, they appear to constitute payments, rather than gifts of the sort to which your question relates, and, therefore, are not considered in this opinion. For example, R.C. 3709.15 authorizes a board of health to "provide nursing care and other therapeutic and supportive care services" to maintain ill or infirm persons in places of residence, and provides that the board "shall charge and collect reasonable fees not to exceed the cost of service for such care from patients financially able to pay, or may accept payment for such services from persons or public or private agencies on behalf of the recipient, either directly or by contract with such persons or agencies." *See also* R.C. 3709.27 (collection of costs of care and treatment of inmates of detention hospitals).

> of this character. Therefore it will be seen that your question must be decided upon the facts. What is a proper expenditure in one case may be wholly improper in another. In a general health district in which the duties of the board of health and its [employees] are such as make it more economical to purchase an automobile than to rely upon other means of transportation, and the efficiency of the board, in view of conditions, requires such, it is believed that by implication sufficient authority may be found....
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> It may be borne in mind that the object of the law is to provide for the public health and welfare, one of the most important functions of government....*I am compelled to the conclusion that it was the legislative intent that such incidental powers were to be exercised by boards of health as would enable them to accomplish their main purpose in a practical and businesslike manner.*

1925 Op. No. 2995 at 763–64 (emphasis added).

It has, accordingly, been concluded that a board of health has incidental powers to acquire and hold property that is necessary to enable it to perform its duties. *Cf.* R.C. 3709.31; 1959 Op. No. 935 at 642 (the board of health of a general health district has no authority to pay its expenses directly; funds that it acquires from the sale of automobiles should be placed in the health fund of the general health district to be paid on the warrant of the county auditor). *See generally McGowan v. Shaffer*, 65 Ohio L. Abs. 138, 155, 111 N.E.2d 615, 625 (C.P. Summit County 1953) ("[t]he implied powers of a board of health should be given a construction in the broadest sense....[T]he actions of such boards should be construed in a most favorable light within the realm and limits of reasonableness"); *State ex rel. Pansing v. Lightner*, 32 Ohio N.P. (n.s.) 376, 383 (C.P. Montgomery County 1934) (a district board of health "possesses not only the authority expressed and implied from the statutes, but that emanating from the very nature of the power invoked to protect health in the locality"); 1980 Op. Att'y Gen. No. 80–089 (the board of health of a general health district has implied power to contract with others to perform actions authorized by statute when the board lacks equipment necessary to perform such actions); 1953 Op. Att'y Gen. No. 2760, p. 264 at 266 ("[i]t is generally held that local health authorities possess implied, as well as express powers and that the powers conferred on them by statute should be liberally construed").

It may be argued that the authority to receive property as a gift is implicit in the power to acquire and hold property. Such an argument was adopted by the Supreme Court in *Carder v. Board of Commissioners*, 16 Ohio St. 353 (1865), in connection with the question of the validity of a devise of real estate to a county. The *Carder* case states:

> The county commissioners are, by various statutes, authorized to "*purchase*" real estate for the use of the county. S. & C. 1229, sec. 2,249; sec. 1. Every lawyer knows, that title by *purchase* is title by any means except descent, and, of course, includes title by devise. That the word purchase will have this original and technical meaning, when used in a statute, and not controlled by other statutes, or the general policy of the law, was expressly decided by this court, in American Bible Society v. Marshall et al., 15 Ohio St. [537 (1864)]. There is the total absence of any such policy, or counter legislation, and our laws, so far as they have gone, are in the contrary direction. The act of 1831 not only authorized donations of land to counties, but it contains, as do other statutes on the same subject, stringent provisions, in cases where the land is not donated, for insuring its purchase at the *lowest price*. If the commissioners can acquire land at the "lowest bid"—which may be *one cent*—why may they not [acquire] it as a gift? And if as a gift, why not as a testamentary gift? No reason, outside of the supposed technical meaning of doubtful words, is attempted to be shown why they should not; and we think that we are only carrying out the spirit and policy of our laws, and are violating no sound and settled rules of construction, when we hold, as we do, that a county may take and hold real estate by devise; that it is a "person," within the meaning of the wills act, and may thus become a

> "purchaser," within the meaning of the acts authorizing counties to purchase real estate, or to take the same by gift.

16 Ohio St. at 368–69. *See also American Bible Society v. Marshall*, 15 Ohio St. 537, 542 (1864) ("in the absence of any other restriction upon its powers, the word *purchase* is, in law, sufficiently comprehensive to include an acquisition by devise"). When the *Carder* decision was issued, there was legislation expressly authorizing county commissioners to receive donations of land, money, and other property. There was no legislation expressly authorizing county commissioners to receive devises, although the wills act did authorize devises to be made to any person. The court concluded that a county could take real estate by devise for any county purpose.

Subsequent to the decision in the *Carder* case, the statutes of Ohio were revised and consolidated in *The Revised Statutes and Other Acts of a General Nature of the State of Ohio* (1880). That codification included R.S. 20, predecessor to R.C. 9.20.[4] As in effect in 1880, R.S. 20 expressly authorized certain governmental entities to receive, hold, and apply gifts, devises, and bequests, as follows:

> The state, county commissioners, township trustees, the councils, boards or officers of municipal corporations, and the boards of directors, trustees, or other officers of any of the benevolent, educational, penal, or reformatory institutions, wholly or in part under the control of the state, and any of said municipalities or institutions, shall be capable of receiving, by gift, devise, or bequest, moneys, lands, or other property, for their benefit or the benefit of any of those under their charge, and to hold and apply the same according to the terms and conditions of the gift, devise, or bequest....

R.S. 20 replaced statutes authorizing county commissioners to accept devises and legacies for the erection and maintenance of children's homes, *see* 1868 Ohio Laws, Adjourned Session, 8 (passed Feb. 11, 1869); authorizing township trustees to accept gifts, grants, devises, and bequests for the use of the poor, *see* 1877 Ohio Laws 37 (passed March 1, 1877); and authorizing the boards of directors or trustees of benevolent, educational, penal, or reformatory institutions of the state to receive property by gift, devise, or bequest for the benefit of such institutions or their inmates, *see* 1878 Ohio Laws 42 (passed March 7, 1878). *See Christy v. Commissioners of Ashtabula County*, 41 Ohio St. 711 (1885); *see also* 1881 Ohio Laws 109 (H.B. 579, passed Apr. 8, 1881) (amending R.S. 20 to include cemetery trustees).

The intent of R.S. 20 was evidently to codify the right of governmental entities to take, hold, and administer gifts, devises, and bequests. Discussing R.S.

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4 R.C. 9.20 currently states:

> The state; a county, a township, or a cemetery association or the commissioners or trustees thereof; a municipal corporation or the legislative authority, a board, or other officers thereof; and a benevolent, educational, penal, or reformatory institution, wholly or in part under the control of the state, or the board of directors, trustees, or other officers thereof may receive by gift, devise, or bequest moneys, lands, or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms of the gift, devise, or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate and may be subject to any reasonable reservation. This section does not affect the statutory provisions as to devises or bequests for such purposes.

R.C. 9.20 does not expressly include boards of health among the entities that may take, hold, and administer gifts, devises, and bequests.

20, the Ohio Supreme Court stated:

> The revisers evidently intended a section, *sufficiently comprehensive to furnish a representative for the people of the state in each of their subdivisions, as well as in their aggregate, capable of taking, holding and administering any property that any testator might choose to devise or bequeath* for the benefit of that aggregate, or of any of its recognized parts, to be used for any purpose recognized by the statutes controlling the beneficiary. Primarily the subdivisions are counties and townships; secondarily cities, villages and hamlets; thirdly, collections of individuals segregated from home-dwelling people by physical or mental defect or infirmity, or by affliction, poverty or crime. (Emphasis added.)

Christy v. Commissioners of Ashtabula County, 41 Ohio St. at 713. R.S. 20 thus expressly authorized the boards or officers of municipal corporations to receive "by gift, devise, or bequest, moneys, lands, or other property, for their benefit...and to hold and apply the same according to the terms and conditions of the gift, devise, or bequest."

The existing system under which the state is divided into city and general health districts was established by the Hughes Act, 1919 Ohio Laws, Part 1, 236 (H.B. 211, passed April 17, 1919), and the Griswold Act, 1919 Ohio Laws, Part 2, 1085 (H.B. 633, passed Dec. 18, 1919). *See State ex rel. Village of Cuyahoga Heights v. Zangerle*, 103 Ohio St. 566, 134 N.E. 686 (1921); 1974 Op. Att'y Gen. No. 74-014. *See generally Board of Health v. City of St. Bernard*, 19 Ohio St. 2d 49, 249 N.E.2d 888 (1969); *State ex rel. Pansing v. Lightner*. It was preceded by a system under which municipal corporations were authorized to establish boards of health as part of their local governments. *See* R.S. 1692 and 2113 (Smith & Benedict ed. 1895); *State ex rel. Mowrer v. Underwood*, 137 Ohio St. 1, 27 N.E.2d 773 (1940); *Board of Health v. State ex rel. O'Wesney*, 40 Ohio App. 77, 178 N.E. 215 (Stark County 1931); *State ex rel. Schmidt v. Colson*, 7 Ohio App. 438 (Ashtabula County 1917); *State ex rel. Miller v. Council of Massillon*, 2 Ohio C.C. (n.s.) 167, 170 (Stark County 1902); Op. No. 75-036; Op. No. 74-014; 1933 Op. Att'y Gen. No. 1355, vol. II, p. 1214; *see also Marion Township v. City of Columbus*, 12 Ohio Dec. 553 (C.P. Franklin County 1902) (discussing township board of health created under R.S. 2121). The legislation establishing the current system of health districts included provisions granting to the health districts the powers that had been conferred upon the boards of health of municipalities. *See* G.C. 1261-30 (enacted in 1919 Ohio Laws, Part 1, 236, 241-42 (H.B. 211, passed April 17, 1919))[5]; *see also* G.C. 1261-19 (enacted in 1919 Ohio Laws, Part 1, 236, 238 (H.B. 211, passed April 17, 1919)) (the district health commissioner "shall have within the general health district all the powers now conferred by law upon health officers of municipalities"). These provisions currently appear in R.C. 3709.36,[6] as follows:

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5 1-A *Page's Ohio General Code* 250 (1946) reads, in pertinent part:

> Sec. 1261-30. *Supersedes existing board of health.* The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act [G.C. §§1261-16 to 1261-43 and 1245 et seq.]. The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed.

6 I am aware that, in certain instances, G.C. 1261-30 and its successor provisions have been cited in support of the proposition that a general health district has all powers granted to a city health district under the Hughes and Griswold Acts and subsequent amendments. *See, e.g., McGowen v. Shaffer*, 65 Ohio L. Abs. 138 (C.P. Summit County 1953); *State ex rel. Pansing v. Lightner*, 32 Ohio N.P. (n.s.) 376 (C.P. Montgomery County 1934); 1952 Op. Att'y Gen. No. 1729, p. 586; 1951 Op. Att'y Gen. No. 787, p.

> ***The board of health of a city or general health district*** hereby created ***shall exercise all the powers*** and perform all the duties ***formerly conferred and imposed by law upon the board of health of a municipal corporation***, and all such powers, duties, procedure, and penalties for violation of the sanitary regulations of a board of health of a municipal corporation are transferred to the board of health of a city or general health district by sections 3701.10, 3701.29, 3701.81, 3707.08, 3707.14, 3707.16, 3707.47, and 3709.01 to 3709.36 of the Revised Code. (Emphasis added.)

At the time of enactment of G.C. 1261-30, there was in effect a successor version of R.S. 20, then appearing in G.C. 18, which authorized municipal boards or officers to receive, hold, and apply gifts, devises and bequests. It follows that the enactment of G.C. 1261-30 had the effect of conferring upon district boards of health the authority formerly conferred upon municipal boards of health to receive, hold, and apply gifts, devises, and bequests. Pursuant to G.C. 1261-30 (now R.C. 3709.36) such authority is construed to have been transferred to boards of health by related statutory provisions setting forth the powers of such boards of health. Such authority is, accordingly, implicit in the powers expressly conferred by statute upon boards of health. *See* R.C. 3709.36.

I conclude, accordingly, that, pursuant to R.C. 3709.36 and related provisions, the board of health of a city or general health district has the powers formerly conferred upon the board of health of a municipal corporation by the predecessor provisions of R.C. 9.20 to receive by gift, devise, or bequest moneys, lands, or other properties, for the benefit of the board, and to hold and apply the properties according to the terms of the gift, devise, or bequest.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 3709.282, the board of health of a city or general health district may receive financial assistance from any source for the purpose of establishing and operating any federal program enacted by the Congress of the United States.

2. Pursuant to R.C. 3709.36 and related provisions, the board of health of a city or general health district has the powers formerly conferred upon the board of health of a municipal

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520; *see also Wetterer v. Hamilton County Board of Health*, 167 Ohio St. 127, 146 N.E. 846 (1957). I am, however, persuaded by the history of the legislation, by the fact that G.C. 1261-30 bears the introduction: "Supersedes existing board of health," by the clear reference of R.C. 3709.36 to powers and duties "formerly" conferred upon the board of health of a municipal corporation, and by the fact that R.C. 3709.36 grants such former powers and duties to boards of health of both general and city health districts that the "board of health of a municipal corporation" referred to in R.C. 3709.36 is not the board of health of a city health district under R.C. 3709.01 but is, instead, the board of health of a municipal corporation in existence prior to enactment of the Hughes Act of 1919. *See* 1942 Op. Att'y Gen. No. 5091, p. 332 at 336 (under G.C. 1261-30, certain provisions of the General Code "which were then in force and applied particularly to municipal health districts were made applicable to boards of health of general health districts"); 1935 Op. Att'y Gen. No. 4567, vol. II, p. 1068 at 1072 (G.C. 1261-30 "provides that boards of health of city health districts shall exercise all the powers theretofore conferred upon municipal boards of health. Prior to the enactment of the Hughes Act, a city board of health was purely a municipal body. Now a board of health of a city health district is a separate entity..."). *See generally Wetterer v. Hamilton County Board of Health*; *Board of Health v. State ex rel. O'Wesney*, 40 Ohio App. 77, 178 N.E. 215 (Stark County 1931); *see also State ex rel. Mowrer v. Underwood*, 137 Ohio St. 1, 27 N.E.2d 773 (1940); 1973 Op. Att'y Gen. No. 73-021; 1972 Op. Att'y Gen. No. 72-088; 1971 Op. Att'y Gen. No. 71-078; 1933 Op. Att'y Gen. No. 1355, vol. II, p. 1214.

corporation by the predecessor provisions of R.C. 9.20 to receive by gift, devise, or bequest moneys, lands, or other properties, for the benefit of the board, and to hold and apply the properties according to the terms of the gift, devise, or bequest.