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OFFICIAL OPINION NO. 47

December 15, 1967

**HEALTH DEPARTMENTS—BI-COUNTY BOARD OF  
HEALTH—County Councils as Having Power to Set  
Salaries of Officers and Employees of Board.**

Opinion Requested by Hon. Austin E. Barker, State Representative.

I am in receipt of your inquiry concerning the Warren County-Fountain County Bi-County Health Board.

You explain that the Board was properly established by a resolution of the Board of Commissioners in each county in June, 1966; that one county has four members appointed to the Board but the other, being unable to find a qualified physician willing to accept an appointment, presently has only three members on the Board; and that the County Council of one county decreased the salaries for employees submitted by the Board.

In response to the situation so described you ask two questions, which may be paraphrased thusly:

1. Is the Bi-County Health Board a legal Board since one county has appointed only three members?

2. Does the County Council of either county have the authority to decrease the salaries established by the Bi-County Health Board for employees of the Board?

1. The membership of a Bi-County Health Board established by resolution of the County Commissioners is specified in Acts 1949, ch. 157, § 552, as amended by Acts 1965.

ch. 358, § 20, the same being Burns § 35-703, which provides:

“Multiple county health departments shall be managed by a board of health comprised of members from each participating county. The county commissioners of each county participating in a multiple county health department shall appoint four members to the board for terms of four years each except that of the original appointees: One shall serve for one year, one for two years, one for three years, and one for four years, with their terms beginning on the first day of January following their appointment. The county commissioners in their appointments to the board of health, shall give due representation to cities above the fifth class based upon the proportionate population ratio of such city or cities to the county population. No more than two members from each county shall be from the same political party. At least one member of the board from each county shall be a physician holding an unlimited license to practice medicine in Indiana. Such board shall have the powers and duties herein prescribed for health boards.”

A question involving a single County Health Board but otherwise similar to yours was asked of the Attorney General in 1961. Acts 1949, ch. 157, § 609, as amended by Acts 1961, ch. 14, § 2, the same being Burns § 35-810, provides for a seven-member County Health Board, specifically including two physicians, one dentist and one veterinarian. The Attorney General was asked whether one or more vacancies on the Board occasioned by the unwillingness of the qualified professional people resident in the county to serve should be left vacant or filled by non-professional people, and whether the Board so constituted would be a legal Board.

The Attorney General in 1961 O.A.G., p. 360, decided:

First, the word “shall” as used in the membership statute is mandatory, and so the positions on the Board must be filled by the qualified professional persons or remain vacant;

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Second, the Board is a legal Board and its actions are valid provided a quorum, which consists of a majority of the required number of members, is present for the transaction of business.

The logic of 1961 O.A.G., p. 360 is both sound and supported by authority, and there is no reason to disagree with the conclusions reached therein.

Therefore, although the Warren County-Fountain County Health Board is presently composed of only seven members, it is a legal Board and may transact business whenever five members are in attendance.

2. Your second question concerns the authority of the county council of either county to lower the salaries set by the Bi-County Board of Health for its employees.

Local boards of health are authorized and regulated by Acts 1949, ch. 157, §§ 400 through 650, as amended, the same being Burns §§ 35-501 through 35-513, 35-601 through 35-901. The sections of the 1949 Act are arranged and numbered in accord with a specified structural outline. Thus, the sections dealing with local boards of health are found under ARTICLE I (ADMINISTRATION OF PUBLIC HEALTH), Part 3 (Local Administration). Part 3 is further broken down into five divisions, each division dealing with a facet of local health administration.

As originally conceived in the 1949 Act, Article I, Part 3, Division 1, was entitled "General Powers and Duties of Local Health Officers and Local Boards of Health," and contained thirteen sections numbered from 400 through 412. (The first section of Division 2 is numbered 450.)

Section 400, Burns § 35-501, begins in this manner:

"Powers and duties described in this division pertain to all local health officers whether full-time or part-time and local boards. . . ."

Acts 1949, ch. 157, Art. 1, Part 3, Division 1, contains no provision relating to who establishes the salary to be paid to the officers and employees of local health boards.

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However, Article I of the 1949 Act was amended by Acts 1965, ch. 358. Along with changing the provisions of several sections, the 1965 Act added a number of sections. Among the added sections, two, 416 and 418, the same being Burns §§ 35-517, 35-519, are of interest.

Section 416, Burns § 35-517, provides:

“The board of each local health department shall submit an annual budget to the board or boards of county commissioners, to the county council or councils, and to the city councils concerned, for their approval of such budget, at the regular time for consideration of the annual budgets.”

Section 418, Burns § 35-519, provides:

“The board of each local health department shall prescribe the duties of all officers and employees. It shall fix compensation of all officers and employees.”

The power given to the board of every local health department by the addition of section 418 in 1965 had been granted in identical terms to the board of every local full-time health department by the original 1949 Act. The power so granted full-time health boards has been previously considered by the Attorney General.

In 1959 O.A.G., p. 19, the Attorney General was asked whether “the board of health of each full-time local health department [could] fix the compensation of all officers or employees without regard to the action of the county commissioners, county council, county tax adjustment board, and other boards of review in the several counties.” His answer, in part, read:

“The Acts of 1949, Ch. 157, Sec. 628, as found in Burns’ (1949 Repl.), Section 35-829, also provides as follows:

“The board of each full-time local health department shall prescribe the duties of all officers and employees. It shall fix compensation of all officers and employees.”

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“The General Assembly may decide that certain governmental functions are sufficiently important that the supplying of funds to carry on these activities must not be left to the discretion of the county council. “State *ex rel.* Test v. Steinwedel, *supra*.

“In construing Burns’ 35-829, *supra*, it is my opinion that it was the intention of the Legislature to delegate to the board of each full-time local health department the power to fix compensation of its officers and employees, and it gave to this board the sole power to do so. It became an imperative duty of the county council to appropriate the amount which the board requested for such salaries.”

Again the reasoning of the Attorney General’s Opinion is both sound and supported by authority. Section 418 of Acts 1949, ch. 157, as added by Acts 1965, ch. 358, § 6, Burns § 35-519, must thus be construed as extending to all local boards of health the power previously possessed only by full-time local boards of health, namely, the power to set the salary for its officers and employees without having the salaries so set subject to decrease by the county council.

The Warren County-Fountain County Bi-County Health Board, being a local health board, thus has the authority to set the salaries for all of its officers and employees, and the salaries to set may not be changed by the county council of either Warren or Fountain County.

This conclusion is supported by another consideration. The statute interpreted by the Attorney General in 1959, Acts 1949, ch. 157, § 628, was amended by Acts 1965, ch. 408, § 1, the same being Burns § 35-829, to read:

“The board of each full time local health department shall prescribe the duties of all officers and employees. It shall fix compensation of all officers and employees, provided that in counties having joint city-county full-time Health Departments such prescription of duties and fixing of compensation shall be subject to prior approval by the common council

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and the board of county commissioners of cities and counties maintaining the department.”

Thus, the same 1965 General Assembly that in one act authorized the creation of the multiple governmental unit health board being considered herein, in a different act specifically withdrew from a different form of multiple governmental health board the power to set salaries not subject to review. The Legislature was clearly aware both of the general grant of powers and of the limits they wished to impose on that grant.

To summarize, it is my opinion that a multiple county health board is a legal board even if one of the counties involved has failed or is unable to appoint all its authorized members and is able to conduct its business whenever a majority of the authorized membership is in attendance. It is my further opinion that such a board may set the salaries of its officers and employees, and that the salaries so set may not be decreased by the county council of any of the participating counties.

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OFFICIAL OPINION NO. 48

December 19, 1967

**INDIANAPOLIS AIRPORT AUTHORITY—As Having Taxing  
Power Where Secondary Airport is not Located  
Within Jurisdictional Boundaries.**

Opinion Requested by Mr. Robert J. Winter, Director, State  
Aeronautics Commission.

This is in response to your request for an opinion on the question of whether statutory authority exists for two counties to share taxes (personal property taxes) derived from