

OFFICIAL OPINION NO. 68

**LOCAL HEALTH BOARD—Transfer of Physical
Properties to Newly Created Board.**

Opinion Requested by Hon. Frederick T. Bauer, State Representative.

I am in receipt of your letter in which you advise me that the board of county commissioners of Vigo County has established a full-time county health board pursuant to Acts 1965, ch. 358, which amended the Public Health Code. You further advise that the creation of such a board causes the automatic dissolution of all other health departments within the county, including that department maintained by the City of Terre Haute, and that the records of such health departments are to be transferred to the newly created health board.

In relation to that situation you ask three questions which can be stated thusly:

1. Are the physical properties previously purchased by the Terre Haute Board of Health to be automatically transferred to the newly created county health board?
2. If the answer to the first question is in the negative, can the Terre Haute Board of Health gratuitously transfer such physical properties to the newly created county health board?
3. If there is any authority for the Terre Haute Board of Health to transfer such physical properties, is it necessary that such transfer be first approved or authorized, or both, by the common council of the City of Terre Haute, or lacking such

OPINION 68

authority in the Board of Health, may the common council itself gratuitously transfer such physical properties?

Acts 1965, ch. 358, amended the Public Health Code (Acts 1949, ch. 157) in several respects, most importantly in connection with your questions by removing from that Code all authority for part-time health departments, whether county or city. Acts 1949, ch. 157, § 450, as amended by Acts 1965, ch. 358, § 13, the same being Burns § 35-601, now provides in part:

“The board of county commissioners of each county, and the mayor of each city located therein, excepting cities of the first class and cities of the second class with populations of less than seventy thousand (70,000) or more than one hundred thousand (100,000) according to the latest United States decennial census, and excepting any city situated in any county having a population of not less than eighty-five thousand (85,000) nor more than ninety-five thousand (95,000) inhabitants according to the latest United States decennial census, *and excepting any county and city which has a full-time health department or is a part of a unit which has a full-time health department, as provided for in Sections 600 to 633, Chapter 157, Acts of 1949 as amended,* and excepting any county which maintains a health and hospital corporation, as provided for in Chapter 287, Acts of 1951, shall appoint a county board of health consisting of seven members.” (Emphasis added.)

Without examining the exceptions contained in the above paragraph individually I will state that none apply to the City of Terre Haute, and only the exception emphasized could apply to Vigo County. If that exception does apply, however, it would mean only that the county is not required to organize such a health board, not that the county is prohibited from doing so. Acts 1949, ch. 157, § 556, as added by Acts 1965, ch. 358, § 24, the same being Burns § 35-707, provides in part:

1967 O. A. G.

“Any county or city which maintains a full-time health department, or is a part of a full-time health department, established under the provisions of Sections 600 to 633, Chapter 157, Acts of 1949 as amended . . . may abandon same and become integrated into the county health department provided for by this act. . . .”

Since your letter states that the board of county commissioners of Vigo County has established a full-time health department as provided by the 1965 Act it matters little whether their doing so was mandatory under section 13 or voluntary under section 24.

The dissolution of the Terre Haute Board of Health by the formation of the new Vigo County Board of Health results from Acts 1949, ch. 157, § 555, as added by Acts 1965, ch. 358, § 23, the same being Burns § 35-706, which provides:

“When a county health department or a multiple county health department is established under the provisions of this act, all other health departments and health boards within the area shall be dissolved and their records shall be transferred to the newly established health department.”

The statute above specifically provides for the transfer of records from the dissolved health boards, but makes no mention of other physical properties. No statute concerning the disposition of such properties can be found in the Health Code. Your first question, then, is basically whether the words “records” as used in the statute above would include physical properties.

I do not think the word can be so interpreted. One of the basic principles of statutory interpretation is that words must be given their usual and customary meaning. *Sutto v. Board of Medical Registration & Examination*, 242 Ind. 556, 180 N.E. 2d 533 (1962); *Champa v. Consolidated Fin Corp.*, 231 Ind. 580, 110 N.E. 2d 289, 36 A.L.R. 2d 185 (1953).

The noun “record” is defined in Webster’s 7th New Collegiate Dictionary (1965) p. 716 thusly:

OPINION 68

“1: the state or fact of being recorded 2: something that records: as a: something that recalls or relates past events b: an official writing that records the acts of a public body or officer c: an authentic official copy of a document deposited with a legally designated officer d: the official copy of the papers used in a law case 3a: the known or recorded facts regarding something or someone b: an attested top performance 4: something on which sound or visual images have been recorded: *specif*: a disc with a spiral groove carrying recorded sound for phonograph reproduction.”

There is, in my opinion, no way in which typewriters, desks and other such personal property can be included in the above definition. Therefore, I conclude that the transfer of such property from the Terre Haute Board of Health to the Vigo County Board of Health is not made automatic by the provisions of Acts 1965, ch. 358, § 23, Burns § 35-706.

In answer to your second question, I find no statute that either expressly or impliedly authorizes the board of health of a city health department to transfer the city property used by that board to a newly established county board of health. Therefore, my answer to your second question is in the negative.

The power to authorize the disposition of city property, including the property of a city health department, in any city not of the first class (see Burns § 48-7005) is vested in the common council of that city by Acts 1905, ch. 129, § 53, the same being Burns § 48-1407, which provides in part:

“The common council of every city shall have power to enact ordinances for the following purposes: . . .

“Fiftieth. To authorize the alienation and conveyance of any property, real or personal, belonging to such city, whether used for public and governmental or for private purposes: *Provided*, That no such property shall be sold until the same has been appraised by three disinterested free holders of such city appointed by the judge of the circuit court in the county

in which such city is located; and no sale or conveyance of any such property shall be made for a less sum than such appraisalment, and, in the case of real estate, only by a two-thirds vote of the common council; such conveyance shall be by the mayor in the name of the city, attested by the city clerk and with the seal of the city: *And provided, further*, That where it is shown to the common council that any personal property does not exceed in value the sum of one hundred dollars the council may authorize the sale thereof without an appraisalment."

The statute above clearly vests the power to alienate the property owned by the City of Terre Haute and used by that city's health department in the common council of the city. A strict construction of the statute above would limit the council's exercise of that power to sale in the prescribed manner, and lead to the conclusion that the property used by the city health department could be transferred to the county health department only by sale at the appraised value.

However, the primary rule of statutory construction is to determine and give effect to the intention of the Legislature. *State ex rel. Milligan v. Ritter's Estate*, 221 Ind. 456, 48 N.E. 2d 933 (1943). And, as was stated by the Indiana Supreme Court in *Lost Creek School Township v. York*, 215 Ind. 636, 644, 21 N.E. 2d 58, 127 A.L.R. 1287 (1939). "Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship, or injustice; to favor public convenience; and to oppose all prejudice to public interests." Finally, statutes which relate to the same thing are in *pari materia* and should be construed together. *Huff v. Fetch*, 194 Ind. 570, 577, 143 N.E. 705 (1924).

In the present instance we are concerned with two legislative enactments. One of those enactments, the 1965 amendment to the Public Health Code, is intended to promote the public health by creating county-wide full-time health departments, and by transferring to the departments so created the functions previously performed by city health depart-

OPINION 68

ments, whether full-time or part-time. As an incidental effect, the statutes make the property used by the city health department, much of which is highly specialized, surplus. The other enactment, a statute obviously intended to prevent fraudulent conveyances by the city common council, provides a cumbersome method for disposal of such property.

It would not "present absurdity" nor "favor public convenience" in this situation to interpret a statute designed to protect the interests of the taxpayers of the City of Terre Haute so as to require the circuit court judge (whose salary is in part paid by the taxpayers of Terre Haute (to appoint two appraisers (whose fees would be paid by the taxpayers of the City of Terre Haute) to set a price on the equipment previously used by the Terre Haute Health Department and to require the Vigo County Health Department to purchase that equipment at the price so set with funds derived in part by taxes levied on the taxpayers of the City of Terre Haute. To interpret the 1905 statute authorizing the common council of a city to alienate property owned by the city so strictly as to deny that council all discretion in the question of whether to sell or gratuitously transfer to a different governmental unit that has succeeded to one or more of the functions of the city, and that is supported in part by taxes levied on the residents of the city, equipment that has been effectively made surplus to the city as a result of that succession would be both absurd and inconvenient to the public.

Thus, it is my opinion that the common council of the City of Terre Haute may transfer to the Vigo County Health Department some, and possibly all, of the property previously used by the city health department. I must, however, stress that my answer is predicated entirely upon the facts present in the instant situation, and is not to be construed as an approval of all inter-governmental unit transfers of property. My decision is limited entirely to those instances where a new governmental unit begins to provide services to the residents of a city that were previously provided by the city, is further limited to the property that had been used by the city in providing those services, and within those limits, my decision is that the common council has the right to de-

1967 O. A. G.

termine whether the interests of the taxpayers of that city would be better served by a gratuitous transfer of the property than by a sale of the property.

In summary, it is my opinion that when the creation of a county health department causes the dissolution of a city health department, the personal property used by the city health department remains the property of the city. It is my further opinion that the common council of the city may authorize the transfer of some or all of that property to the newly created county health department, either by sale or gratuitously, whichever the council deems to be in the best interest of the residents of the city.

OFFICIAL OPINION NO. 69

LOCAL HEALTH BOARD—Adoption of Rules and Regulations Concerning Food Establishments.

Opinion Requested by Dr. A. C. Offutt, State Health Commissioner.

I am in receipt of your inquiry concerning the powers of local boards of health. Your letter presents two questions which may be phrased thusly:

1. May local boards of health adopt rules and regulations concerning the operation of food establishments?
2. If local boards of health have such authority, are the rules and regulations they adopt subject to approval by the State Board of Health?

The State Board of Health and all local boards of health are organized under and regulated by the Public Health