



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

February 14, 1991

FILE NO. 91-008

PUBLIC HEALTH:
State's Attorney Is
Legal Advisor to County
Health Department

Honorable John B. Leonard
State's Attorney, Brown County
116 West North Street
Mt. Sterling, Illinois 62353

Dear Mr. Leonard:

I have your letter wherein you pose several questions relating to county boards of health and county health departments. You have stated that the Brown County Health Department was created by the county board in 1978. The health department receives revenue from the Brown County Tuberculosis Board pursuant to a contract, from the Illinois Department of Public Health, from Federal grants, and, since 1984, from a property tax levied pursuant to section 5-25003 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-25003, formerly Ill. Rev. Stat., ch. 111 1/2, par. 20c1).

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Your first question is whether the State's Attorney serves as legal advisor to the county board of health and health department. Pursuant to statute (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005), the State's Attorney is under duty to represent and advise all county officers. It has been held that a county health department created by virtue of a county board action is a department of the county, and not a separate unit of local or State government. (County of Macon v. Bd. of Education of Decatur School Dist. No. 61 (1987), 165 Ill. App. 3d 1, 8.) The same conclusion was reached by Attorney General Scott in opinion No. S-602, issued June 27, 1973 (1973 Ill. Att'y Gen. Op. 108). Because the county health department is a department of the county, it is my opinion that its officers and the members of the board of health are county officers whom the State's Attorney has a duty to advise.

Your second question, relating to the first, is whether the board of health may make expenditures from the county health fund to pay for legal services provided by attorneys other than the State's Attorney. It is well established that, absent specific enabling legislation, county officers have no authority to retain private counsel. (See, e.g. 1977 Ill. Att'y Gen. Op. 59; 1975 Ill. Att'y Gen. Op. 12.) The Supreme Court has stated, with respect to the office of State's Attorney, that:

" * * *

The law is well settled that when the constitution or the laws of the State create an office, prescribe the duties of its incumbent and fix his compensation, no other person or board, except by action of the legislature, has the authority to contract with private individuals to expend public funds for the purpose of performing the duties which were imposed upon such officer.

* * *

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Ashton v. County of Cook (1943), 384 Ill. 287, 300.

The Court further stated that contracts for the payment of such fees were ultra vires and void. Similarly, in opinion No. 83-001, issued February 17, 1983 (1983 Ill. Att'y Gen. Op. 1), Attorney General Hartigan concluded that in the absence of the appointment of a special State's Attorney, a county was under no liability to pay any attorney's fees or litigation expenses incurred by county officers.

Therefore, since the State's Attorney is, by law, the legal advisor and representative of the county board of health, it is my opinion that funds from the county health fund may not be used to pay attorney's fees to private counsel retained by board of health members or health department officers. Such a payment would be ultra vires. You may wish to review Kinzer v. City of Chicago (1989), 128 Ill. 2d 437 and Chicago ex rel. Cohen v. Keane (1976), 64 Ill. 2d 559, and cases cited therein for guidance regarding remedies which may be available if such expenditures have been made.

Your third question concerns whether all receipts of the health department must be deposited in the county health fund. Section 5-25011 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-25011) specifically provides that proceeds of the annual tax levy must be held in the county health fund. Further, section 5-25013 of the Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-25013) provides that fees collected for services rendered must be credited to the county health fund. In addition to these sources, however, the Brown County Health Department receives funds from contracts with other entities and from State and Federal grants. There is no specific statutory requirement that these contract and grant funds be credited to the county health fund.

Section 5-25013 of the Act provides, in pertinent part, that the county board of health may:

" * * *

2. Receive contributions of real and personal property;

* * *

5. Enter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services;

* * *

"

Neither of these subparagraphs, in contrast to the subparagraph concerning the deposit of fees for services rendered, expressly requires receipts from these sources to be credited to the

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county health fund. Further, section 5-25013 of the Code also requires the board of health to publish an annual report including "the sums of money received from all sources, giving the name of any donor, [and] how all moneys have been expended and for what purpose". The absence of a specific requirement that such funds be deposited in the county health fund, together with the broad reporting requirement, indicates a legislative intent that contract and grant money need not be deposited in the county health fund.

In this regard, however, I note that there appears to be no authorization for the board of health to maintain a fund outside of the county treasury. Therefore, it is my opinion that if miscellaneous funds are received by the board of health and are not deposited into the county health fund, they must be paid into one or more special funds established in the county treasury. These funds, like those of the county health fund, will be subject to budgeting and appropriation by the county board. (See Ill. Rev. Stat. 1989, ch. 34, par. 25-010; par. 6-1001 et seq.)

Your final question is whether the executive officer of the department, who is required by section 5-25013 of the Code to be either a medical health officer or public health administrator, and other professional employees or officers and employees referred to in section 5-25013, must be full-time employees of the department. Section 5-25001 of the Counties

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Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-25001) provides, in pertinent part:

" * * *

A full-time health department is one whose personnel, other than consultants and clinicians, devote their full time during regular, standard working hours to health department duties. Reference hereinafter made to health departments means full-time health departments unless otherwise specified."

In essence, no provision is made in the Code for health departments which are not full-time. Different provisions of the same statute should be construed as being consistent rather than inconsistent, and should be interpreted as being in pari materia. (Mann v. Board of Education (1950), 406 Ill. 224, 230.) The terms "consultant" and "clinician" in section 5-25001 are distinct and different from the term "executive officer of the department" in section 5-25013. While it may be possible, in some instances, for a medical health officer or a public health administrator to be either a consultant or clinician or both, it would be contrary to the ordinary meaning of the language used to conclude that the executive officer of the department could be merely a consultant or clinician for the department. Therefore, because all personnel who are not consultants or clinicians are required by statute to devote their full time during regular, standard working hours to health department duties, it is my opinion that the executive officer of the department, whether a medical health officer or

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a public health administrator, must be a full-time employee of the department.

Whether professional employees or other officers and employees of the department must devote full time during working hours to health department duties depends upon whether such employees can be considered to be consultants or clinicians. To assist you in determining this issue with respect to each class of employees, you may wish to refer to the Department of Public Health rules regarding minimum qualifications of personnel employed by full time local health departments. These rules are found in part 600 of Title 77 of the Illinois Administrative Code (77 Ill. Admin. Code § 600.100 et seq.).

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL