

**OPINION
57-144**

May 22, 1957

PUBLIC HEALTH -- HEALTH DISTRICT -- PAYMENTS BY COUNTY

This is in reply to your request for consideration by this office of a problem arising in regard to funds of a health district.

You inform us that your county is a member of a health district composed of seven member counties. The budget of the Health District for the fiscal year ending July 1, 1957, indicated that your county was obligated in the sum of \$3,763.06. \$3,180.00 was designated as for payment of the salary of a registered nurse within your county. On June 1, 1956, the registered nurse resigned and no nurse was secured until March, 1957.

The county commissioners of your county have now refused to pay into the Health District a sum equivalent to nine months salary for the nurse in so far as the county was without her services for that period.

Your questions are stated as:

1. Does the county have to pay such sum into the Health District?
2. Could the Commissioners legally pay for a service that was not actually rendered?

The Health District Fund statute, section 23-1411 of the 1953 Supplement to the North Dakota Revised Code of 1943, at least in terms sets up the district health fund, in a manner differing from practically all other funds raised by the county. It provides in the first instance for the setting up of a health district budget including all proposed expenditures for the ensuing fiscal year. Such budgeted amount is then prorated among the various counties. The tax is actually levied by the county; but such tax is under a separate 3/4 mill limit, although not within the mill levy limit prescribed for general and special county purposes. The amount derived from the levy is required to be placed in a special health fund. Rather than being kept by the county treasurer and claims being audited by the county auditor, specific provision is made for deposit of the amount raised quarterly with the district treasurer, audit of claims by the district board of health and payments directly by the district treasurer upon the order of the district board of health. Finally, we note the provision that "Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year."

It would thus appear that the county health fund though originally composed of taxes levied and collected by the county under the terms of the statute in the first instance

must be paid in its entirety to the district health unit treasurer. The district health unit is not required to and does not at least under the terms of such statute contract to perform services to earn such funds.

It is therefore our conclusion that your first question must be answered in the affirmative. Obviously, of course, your second question must be answered in the negative. The Board of County Commissioners could not legally pay for a service that was not actually rendered, however, under the facts submitted, we are unable to understand the application of such principal to the instant situation. There is no provision in the statute for the payment of the health fund to any person or agency for services rendered or to be rendered, by any officer of the county. The statute required specifically that the amount derived from the levy for this purpose be placed in the special health fund. It further provides that such health fund be deposited with and disbursed by the treasurer of the district board. The counties comprising the health district are required to remit and make settlements with the district treasurer quarterly.