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Opinion No. 55-216

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**ARIZONA ATTORNEY GENERAL**

REQUESTED BY: Honorable Raul H. Castro  
Pima County Attorney

OPINION BY: Robert Morrison, The Attorney General  
Gordon Aldrich, Assistant Attorney General

QUESTION 1: Does Chapter 127 of the Laws of 1955 remove the budget-making power of the County Board of Supervisors for the city-county health department and require the Board simply to perform a ministerial act of including the "budget" submitted to it by the city-county health department in the general county budget, and thus levy the taxes necessary to provide the funds to cover the health board budget?

CONCLUSION: No.

QUESTION 2: Does the Act deprive the Board of Supervisors of supervision and control over the expenditures of and by the city-county health board?

CONCLUSION: No.

To look at the new Section, 68-211, et seq, as a whole, would lead to the conclusion that the Legislature created a branch of STATE government designed to deal with local health within the geographic boundaries of the individual counties.

The local health unit is conducted in "conformity with rules, regulations and policies of the State Department of Health." 68-211. The State Department of Health, with the approval of the State Board of Health, outlines the plan for the local unit and determines the area in which it is to hold sway. 68-212. The local unit is qualified and empowered to use four sources of revenue: federal, state, local and other funds. The County Treasurer is required to administer these funds under the direction of the local unit. The local unit estimates its own budget. The funds with which it is provided do not lapse or revert.

There are parallel situations in the creation of local boards of welfare, and, to some degree, there is a parallel situation in the creation of school districts. Principally, the distinction lies in the fact that they are branches of state government rather than branches of county government.

So far, all of the above indications of the statute point to the creation of a single, local branch of state government autonomous in design in so far as it remains within the health field.

To so hold, however, would literally give the local Board of Health an unlimited budget at the expense of other department of county government. The over-all budget limitation for the county (not for the departments within the county) is ten per cent.

Thus, a literal application of the statute would be to allow the local health unit to take up the full ten per cent at the expense of the other departments of county government. Such a situation, of course, would be intolerable, and, therefore, not the intent of the Legislature. For that reason, the Board of Supervisors does, in fact, have control over the expenditures of local funds by the local health unit.

Chapter 68, Article 2, of the Code, contains legislative authorization for the establishment of joint city-county health departments. No provision was made in the enabling legislation for budgeting funds. Section 68-213(d) merely provides:

"Funds to be expended shall be provided. . .  
on an equal per capita basis. . ."

It followed, therefore, under this arrangement an independent county budget was estimated and adopted to provide county per capita share of the total cost, and, similarly, a city budget was adopted. The two budgets were adopted pursuant to Sections 73-502 and 73-503. In addition to these funds, the state, and through the state, the federal government contributed to expenditures of the joint health board, pursuant to Section 68-217. In effect, the budget statutes governing counties and cities separately as separate political subdivisions and budgetary units were required to apply to a combined budget item. Because Sections 73-502 and 73-503 were not intended to meet a combined budget item, it is readily apparent that corrective legislation to meet the new situation was required. This was provided by the adoption of Sections 68-215a and 68-215b, in Chapter 127, Laws of 1955.

What then is the effect of the amendment? Did it repeal Sections 73-502 and 73-503 with respect to combined city-county budgets for health departments? Did it make the joint health board a budgetary unit independent of either the county or city governing bodies? In short, did it vest the combined health board with the same independent budgeting powers as has been vested in school district boards by Section 54-603, 54-604 and 54-605? Our Supreme Court ruled in Yankee vs. School District, 56 Ariz. 93, 105 P.2d 966, that:

" . . . the board of supervisors has no power to alter the amount of money to be raised for each school district from that fixed by the board of trustees and the county superintendent as above, . . . "

A comparison of the procedures set up in school budget laws and in Chapter 127 indicates the answer. Under the school law, all of the essential procedures are required to meet the salutary purposes of budgeting of public finances.

In the Yankee case, supra, the Court explained the purpose of the budget law:

"As we have repeatedly said, the purpose of the budget law was as much to appraise the taxpayers of the extent of the obligations which would be incurred during the ensuing year, and which they would be obliged sooner or later to meet, as to enable them to protest any item of expense."  
(Emphasis added)

Where is the appraisal of the taxpayer afforded? Where is the opportunity to protest authorized in Chapter 127, Laws of 1955? There is none. We must conclude it was not the intent of the Legislature to authorize a joint county-city board to adopt its own budget, without review by either the supervisors or the city council.

Irrespective of legislative intent, did the Legislature actually, whether wittingly or not, remove combined health budgets from the provisions of Sections 73-502 and 73-503? There is no direct statement to this effect. Then, was it done by implication? The Supreme Court has determined the question of implied repeal of budgetary provisions in Southern Pacific Company vs. Gila County, 56 Ariz. 499, 109 P.2d 610, wherein it held that, if the budgeting body (in this case, the city council) could comply with both the old budgetary statute and the subsequently enacted one, then there was no repeal. This compliance is possible with respect to combined health budgets. It must be concluded the adoption of Chapter 127, Laws of 1955, did not divest either the county supervisors or the city council of its budget making powers, pursuant to Sections 73-502 and 73-503, with respect to combined health department budgets.

What, then, is the effect or purpose of Chapter 127? It is intended to fill a procedural gap in the budget statutes created by the authorization for a combined operation, which, prior to such enactment, were separate operations and separate budget items of both the county and city.

Close examination of Chapter 127 indicates that the Legislature was only concerned with procedure. The act empowers the combined health board to estimate the cost of maintaining the department. Then it provides that the estimate "shall be submitted in the form of a budget on or before June 1 of each year to the board of supervisors and to the city council. . ." The statute thereafter is incomplete, because it does not say for what purpose the estimate shall be submitted, but merely specifies the ultimate step that the supervisors and the council shall "provide any money necessary to cover the cost." Omitted are the necessary steps for adoption of the estimate as a budget; remember it was only submitted in the form of a budget. The inclusion of the proportionate amount in the county or municipal budget and finally the raising of the money by levy and collection are necessary before the county or the city may "provide any money necessary to cover the cost." It was not necessary, however, to include any of these steps in Chapter 127, if the Legislature intended Sections 73-502 and 73-503 to remain in effect, as to combined budgets, for the reason they are set forth in those two sections.

It is our conclusion, therefore, that Chapter 127 authorizes the joint health board to prepare a budget estimate, and that the final budget is adopted by the supervisors for the county share and the council for the city share, after publication of notice, hearing thereon and formal action.

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