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File No. S-717

COUNTIES:
Health Department
Merit Systems

Honorable Basil G. Greanias
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Dear Mr. Greanias:

I have your letter in which you state:

"I would appreciate your formal answer to,
and opinion on, the three questions set forth * * *
as follows:

1. Does a non-home rule county have the authority to adopt an ordinance or resolution authorizing the county board of health to establish and maintain a merit system of personnel administration for employees of the county health department?

2. If the answer to the foregoing question is in the positive, does a non-home rule county

Honorable Basil G. Greanias - 2.

have the authority to adopt an ordinance or resolution authorizing the county board of health to enter into a contract or otherwise associate with a city or a private entity for the establishment and maintenance of such merit system?

3. If the answer to the foregoing question is in the negative, does Section 63b119 of Chapter 127 of the Illinois Revised Statutes, 1971, confer authority in non-home rule counties to adopt an ordinance or resolution authorizing the county board of health to enter into a contract with The Department of Personnel of the State of Illinois for the establishment of such merit system, as distinguished from the 'administration' of same?

I would appreciate your attention to this matter at your earliest convenience, and I will be looking forward to your reply."

It is clear that the authorization for State action in relation to the preservation of public health lies in the State's inherent police power. (People ex rel. Barmore v. Robertson, 302 Ill. 422.) The exercise of said power rests peculiarly in the legislature, which in turn may delegate it to public health departments. People ex rel. Barmore v. Robertson, 302 Ill. 422.

The legislature has, in one instance, delegated this police power to the counties by enacting "AN ACT in relation to the establishment and maintenance of county and multiple-county

Honorable Basil G. Greanias - 3.

public health departments". (Ill. Rev. Stat. 1971, ch. 111 1/2, pars. 20c at seq.) Said Act empowers counties to establish county and multiple-county health departments (Ill. Rev. Stat. 1971, ch. 111 1/2, pars. 20c, 20c1, 20c2) which are to be managed by boards of health appointed by the Presidents or Chairmen of the county boards. (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 20c12.) In a previous opinion to which you have referred (S-602, June 27, 1973), I determined that such health departments are county agencies. Furthermore, such health departments' employees are county employees. 1951 Op. Atty. Gen. 226.

In response to your first question, it should be noted that a county, in addition to its constitutional powers, possesses only those powers expressly granted by statute (Ill. Const., art. VII, sec. 1) or those that arise by necessary implication from those powers granted. (Heidenreich v. Ronske, 26 Ill. 2d 360.) This concept also applies to health departments. (People v. Tait, 261 Ill. 197.) There is no express statutory grant of power to counties authorizing their boards of health to establish and maintain a merit system of personnel administration for employees of such county health departments. Likewise, there is no express

Honorable Basil G. Greanias - 4.

grant of power to county health departments to establish and maintain such a system on their own initiative.

Absent the existence of an express grant of power to establish such a merit system, the question becomes whether such a power can arise by implication. Under sections 14 and 15 of said Act (Ill. Rev. Stat. 1971, ch. 111 1/2, pars. 20c13 and 20c14), a board of health is empowered to employ and discharge health department officers and employees. Since the power to employ implies, in my opinion, the power to establish procedures whereby employment, promotion, discipline and discharge are based on recognized merit principles, I am of the opinion that the board of health of a county can, on its own initiative, establish a merit system of personnel administration for employees of the county health department. A county board, however, may not require its board of health to initiate such a merit system since the exercise of the power to employ in this instance is vested in the board of health and not in the county board.

Although the answer to your first question is therefore in the negative, it is my opinion that once a county board of health has decided through its personnel powers to establish a

Honorable Basil G. Greenias - 5.

merit system for county health department employees, the county board can authorize the board of health to contract for assistance in establishing and maintaining said system. The basis for this conclusion can be found in an examination of a county's powers as exercised by its county board and board of health. While a board of health is expressly empowered to employ personnel and impliedly empowered to establish a merit system therefor, it is nevertheless not empowered to contract for assistance in establishing and maintaining such a system. The reason for this, as noted in my previous opinion S-602, is that a board of health's contractual powers are specifically limited to contracts for the "purchase, sale or exchange of health services". (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 20c13.) Construing such powers to include the power to contract in relation to a merit system would be an improper enlargement of its statutory contractual powers.

A county board, on the other hand, as a body through which a county's powers are exercised (Hardin v. Sangamon County, 71 Ill. App. 103), is generally empowered to contract in relation to the concerns of the county necessary to the exercise of the

Honorable Basil G. Greanias - 6.

county's corporate powers. (Ill. Rev. Stat. 1971, ch. 34, par. 303.) As a county health department is a county agency, its powers to employ and establish a merit system therefor, although exercisable only by its board of health, are corporate powers of the county. In addition, a county board is empowered to manage the county business except as otherwise specifically provided. (Ill. Rev. Stat. 1971, ch. 34, par. 403.) Consequently, since it has not been otherwise specifically provided, the county board can contract with a private entity for assistance in establishing and maintaining the county health department's merit system and it can also contract for the same purposes with a city under the authorization of the Intergovernmental Cooperation Act (P.A. 78-785, Illinois Legislative Service, 1973 Laws), if the city is authorized by law to perform such services. Furthermore, since a county board may delegate the authority to contract on behalf of a county (Consolidated Chemical Lab. v. Cass Co., 322 Ill. App. 353), it may by ordinance or resolution authorize the board of health to contract on behalf of the county for assistance in establishing and maintaining the health department's merit system.

Any contract of the type described above, however, would not be binding upon succeeding county boards (1931 Op. Atty. Gen. 114), for as noted in my previous opinion 8-602:

"In the 1931 opinion of the Attorney General, page 116, my predecessor noted that:

'In the case of Millikin v. County of Edgar, 142 Ill. 529, the Court held that while a county board of supervisors is empowered by statute to acquire land for a court [sic] house, and to appoint a keeper thereof, and to make provision for the care of the poor, such board however, did not have the power to contract with the person appointed as poor house keeper, for the management of the poor house and farm and care of paupers for a period extending to three years, and if such contract was attempted to be made, it would be void. In that case, the members of the board of supervisors were elected annually at the time the contract was attempted and each member held his office for the term of one year and no longer, and the board was given the power to cause to be annually levied and collected, taxes for county purposes, and the Court said:

'In view of this provision of the statute, it would be an unreasonable construction of the statute relied upon, to hold that the legislature intended to clothe the board with authority to enter into a contract with a keeper of a poor house to run for a term of three years. If the board had the power to enter into a binding contract of this character for three years, no reason is perceived why it might not make a contract for five or even ten years, and if this could be done, then hands of succeeding boards would be tied and their powers taken from them. If this important power, the supervision of a poor farm and the care of the unfortunate, may be

Honorable Basil G. Greanias - 8.

so far delegated as was attempted in this case, the county might be deprived, in a great measure, of one of the most important affairs entrusted to its care and supervision. The statute should not receive a construction which might lead to such disastrous results unless the language employed would admit of no other reasonable interpretation.'"

Finally, the correspondence I have received from you on this matter suggests a reluctance to rely on implication as a means for finding authority for a county to establish a merit system in view of the fact that the legislature has, in several instances, enacted detailed legislation providing for various civil service systems. In response to this concern, it is my opinion that there is no inconsistency between the legislature's specifically establishing civil service systems on the one hand, and a finding of implied authority for counties to establish merit systems on the other.

Merit systems specifically established by legislative enactment are substantively different from those which may be established under a county's implied power. In the case of the former, matters embraced by employment powers which are normally reposed in various units of local government or agencies thereof,

Honorable Basil G. Greanias - 9.

have been transferred to civil service boards or merit commissions possessing varying degrees of independence from those bodies. Instances of such statutory boards include the Merit Board of the University Civil Service System of Illinois (Ill. Rev. Stat. 1971, ch. 24 1/2, pars. 38b1 et seq.), civil service boards for park districts (Ill. Rev. Stat. 1971, ch. 24 1/2, pars. 78 et seq.), merit commissions for deputy sheriffs (P.A. 78-417, Illinois Legislative Service, 1973 Laws), and the Civil Service Commission of Cook County. Ill. Rev. Stat. 1971, ch. 34, pars. 1105 et seq.

Typically, the statutes establishing such boards and commissions provide specific terms for the board members (Ill. Rev. Stat. 1971, ch. 24 1/2, par. 79; P.A. 78-417, Illinois Legislative Service, 1973 Laws; Ill. Rev. Stat. 1971, ch. 34, par. 1105) and permit removal only for incompetence, malfeasance (Ill. Rev. Stat. 1971, ch. 24 1/2, par. 79; Ill. Rev. Stat. 1971, ch. 34, par. 1106), or neglect. (Ill. Rev. Stat. 1971, ch. 34, par. 1106.) Removal procedures are specifically detailed. (Ill. Rev. Stat. 1971, ch. 24 1/2, par. 79.) The boards or commissions so created are empowered to classify offices and places of employment (Ill. Rev. Stat. 1971, ch. 24 1/2, pars.

Honorable Basil G. Greanias - 10.

38b3 and 80; Ill. Rev. Stat. 1971, ch. 34, par. 1107), and to promulgate rules for examination, employment, removal (Ill. Rev. Stat. 1971, ch. 24 1/2, pars. 38b3 and 82; P.A. 78-417, Illinois Legislative Service, 1973 Laws; Ill. Rev. Stat. 1971, ch. 34, par. 1108), and promotion of employees. Ill. Rev. Stat. 1971, ch. 24 1/2, pars. 38b3 and 87; P.A. 78-417, Illinois Legislative Service, 1973 Laws; Ill. Rev. Stat. 1971, ch. 34, par. 1113.

Furthermore, these legislatively established civil service systems also specify those positions or personnel which are covered (Ill. Rev. Stat. 1971, ch. 24 1/2, pars. 38b4 and 78; P.A. 78-417, Illinois Legislative Service, 1973 Laws; Ill. Rev. Stat. 1971, ch. 34, par. 1107), and those which are exempted. Ill. Rev. Stat. 1971, ch. 24 1/2, pars. 38b4 and 90; P.A. 78-417, Illinois Legislative Service, 1973 Laws; Ill. Rev. Stat. 1971, ch. 34, par. 1116.

Unlike the systems described above, merit systems established through the exercise of implied powers need not operate under the same restrictions. Such merit systems need not establish separate boards or commissions to administer

Honorable Basil G. Greanias - 11.

them. If boards or commissions were established for said purpose, they would not be independent ones but rather would be subject to the direct control of the creating bodies. The terms of their members and procedures for their removal, if any, and the positions or personnel to be covered or exempted, would be determined by the creating bodies, not by legislative enactment.

Under a merit system established by a county board of health, the board of health, itself, could administer the system. If a board or commission were created to do so, the board of health could appoint its members for indefinite terms, subject to removal at any time. Finally, the actions taken by such a board or commission would be subject to approval by the board of health.

Since the answer to your second question is in the affirmative, it is unnecessary to answer your third question.

In conclusion, it is my opinion that the power of a county board of health to employ implies the power to establish a merit system of personnel administration for employees of the county health department; that this implied power, although a corporate power of the county, may be exercised only by the board of health to whom the power to employ is granted; that

Honorable Basil G. Greenias - 12.

once a county board of health has decided through its personnel powers to establish such a merit system, the county board may authorize said board of health to contract on behalf of the county for assistance in establishing and administering said system; that a contract so made would not be binding upon succeeding county boards.

Very truly yours,

A T T O R N E Y G E N E R A L