



ROLAND W. BURRIS  
ATTORNEY GENERAL  
STATE OF ILLINOIS

October 27, 1992

FILE NO. 92-023

PUBLIC HEALTH:  
Legal Advisor to Multiple  
County Health Department

Honorable Mike McCormick  
State's Attorney, Johnson County  
Johnson County Courthouse  
Vienna, Illinois 62995

Dear Mr. McCormick,

I have your letter wherein you inquire whether a multiple county health department should be considered a county agency, for purposes of receiving advice and representation from a State's Attorney, and, if so, which of the State's Attorneys serving the several counties included in the department is responsible for providing such services. For the reasons hereinafter stated, it is my opinion that a multiple county health department is an agency of each of the several counties which participates in its establishment; therefore, each of the several State's Attorneys for those counties is under duty to advise and represent the officers of the department. The determination of which State's Attorney or State's

Attorneys will advise or represent the department in specific circumstances may be resolved by agreement.

Multiple county health departments are established and governed pursuant to Division 5-25 of the Counties Code. (Ill. Rev. Stat. 1991, ch. 34, par. 5-25001 et seq.) Once a referendum approving a tax levy for the department has been approved, the several county boards are directed to agree upon the conditions governing the organization and operation of the department and the apportionment of the costs thereof. (Ill. Rev. Stat. 1991, ch. 34, par. 5-25004.) Taxes to support the department are levied by the several participating counties, not by the multiple county board of health. (Ill. Rev. Stat. 1991, ch. 34, par. 5-25010.) The board of health is composed of four members (one of whom is required to be a member of the county board) from each of the several participating counties. (Ill. Rev. Stat. 1991, ch. 34, par. 5-25012.) The multiple county board of health exercises the same powers and duties as a single county board of health. (Ill. Rev. Stat. 1991, ch. 34, par. 5-25013.)

In Macon County v. Decatur School District 61 (1987), 165 Ill. App. 3d 1, the court held that a single county health department was a department of county government. Based upon that decision, I concluded in opinion No. 91-008, issued February 14, 1991, that the officers and members of a single county board of health are county officers whom the State's Attorney has a duty to advise.

Even prior to the decision in Macon County v. Decatur School District 61, Attorney General Scott had concluded that a county or multiple county health department is not a special district and, accordingly, is not a unit of local government, but rather is an agency or department of the county. (1973 Ill. Att'y Gen. Op. 108, 110.) My predecessor also reiterated this conclusion in a subsequent opinion. (1974 Ill. Att'y Gen. Op. 108.) There is no authority to the contrary.

Based upon the cited case and opinions and the analyses contained therein, it is my opinion that a multiple county health department is an agency or department of each of the counties which participates in its organization and operation. From this conclusion it follows, for the reasons discussed in opinion No. 91-008, that the officers and members of the board of health are officers of each county, whom each of the respective State's Attorneys has a duty to advise. (Ill. Rev. Stat. 1991, ch. 34, par. 3-9005.) Further, the board of health has no authority to make expenditures from county health funds to pay for legal services of other attorneys.

I recognize the practical difficulties which may arise because each State's Attorney in the multiple county region is under duty to provide legal services to the department. The General Assembly, however, has not designated one State's Attorney to act on behalf of the department to the exclusion of others. (Cf. Ill. Rev. Stat. 1991, ch. 122, par. 3A-15, which

relates to legal representation of regional superintendents of schools in multiple county regions.) Therefore, each State's Attorney retains the primary duty to prosecute or defend any actions concerning the health department which may arise in his or her county (Ill. Rev. Stat. 1991, ch. 34, par. 3-9005(1), (4)). Nonetheless, for considerations of practicality, it would be logical for the several State's Attorneys involved to agree upon a policy governing the circumstances in which each is obligated to provide services to the department. Alternatively, the participating counties could enter into an agreement which could apportion funding for the joint appointment of an Assistant or Special Assistant State's Attorney having expertise in matters of interest to the health department, who would be appointed and assigned to represent the department on behalf of the several State's Attorneys. Such an assistant or special assistant could be administratively employed by one county or jointly by all of them, either on a permanent or a temporary basis, according to the needs and desires of those involved.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL