

**Opinion No. 17****County Treasurer—District Health Unit—Pooled Resources.**

**Held:** If a group of Counties form a district health unit, the County Treasurer of one of the participating counties may, but is not compelled to act as the disbursing agent of the "pooled resources" of the various counties. The Treasurer would not be acting in his official capacity as County Treasurer, but he would be designated as treasurer of the District Health Unit.

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May 3, 1949.

L. J. Lull, M.D.  
Epidemiologist  
State Board of Health  
Helena, Montana

Dear Doctor Lull:

You have submitted for my opinion the following question:

"If a group of counties wish to form a District Health Unit, may the treasurer of one of the Counties act as the disbursing agent for all counties, pooling all funds, in a single account and paying from that account salaries and expenses necessary to conduct the service of the District Health Unit."

The enabling act that provides for the establishment of District Health Units is Chapter 171, Session Laws of 1945. Section 5 of this Act provides:

"Two or more adjacent counties and the first-class cities located therein may, when it is so desired by the several political subdivisions, **pool their resources to form a full-time district health unit.** For the maintenance of such full-time District Health Unit the cost thereof shall be borne by the several participating counties on a basis of assessed valuation of each participating County in proportion to the total assessed valuation of all property within the area included in the district. When first-class cities desire to cooperate in the maintenance of a full-time District Health Unit, they shall financially cooperate in such amount as may be agreed upon by the governing council or body of the city concerned and the County Commissioners for the County in which such first-class city is located. **Any funds appropriated for health service by a city which shall participate in the maintenance of a full-time District Health Unit shall be paid to the County Treasurer** who shall disburse those funds as County funds." (Emphasis supplied.)

It is apparent from this section that a city desiring to participate in a District Health Unit may pay their proportionate share to the County Treasurer and these funds will be disbursed as County funds. However, the above section is not specific as to the procedure to be followed in the pooling of resources when a combination of contiguous counties desire to set up and participate in a District Health Unit.

A fundamental rule of law which the Montana Supreme Court has stated many times is:

"That when ever a power is conferred upon a Board of County Commissioners, but the mode in which the authority is to be exercised is not indicated, the board in its discretion may select any appropriate method or course of procedure." (Fisher v. Stillwater Co., 81 Mont. 31, p. 35; State ex rel. Blair v. Kuhr, County Attorney, 86 Mont. 377, 283 Pac. 758; Simpson v. Silver Bow County, 87 Mont. 83, 285 Pac. 195).

In my opinion the 29th Legislative Assembly expressly conferred upon the County Commissioners of contiguous counties desiring to participate in a District Health Unit, the power to "pool their resources to form a full time District Health Unit," and in the absence of the statutory procedure directing how this "pooling" shall be accomplished, the appropriate method or course of procedure is left to the sound discretion of the County Commissioners.

In passing, it should be noted that if a group of counties form a District Health Unit, they could not compel the treasurer of one of the counties to act as the disbursing agent for the "pooled resources". This duty is not conferred upon the County Treasurer by Chapter 171, Session Laws of 1945, and he is not required to perform any duties not imposed on him by law. (Rosebud County v. Smith, County Treasurer, 92 Mont. 75, 9 Pac. (2d) 1071). If a particular County Treasurer consented to act as disbursing agent for the "pooled resources," he would necessarily have to keep said funds separate and distinct from any County funds.

From the above discussion, it is my opinion that if a group of counties form a District Health Unit, the County Treasurer of one of the participating counties may, but is not compelled to, act as the disbursing agent of the "pooled resources" of the various counties. The above mentioned treasurer would not be acting in his official capacity as County Treasurer, but he would be designated as treasurer of the District Health Unit.

Although you have not presented the question for my opinion, I would like to bring to your attention the fact that a County Treasurer would not be liable on his official bond for the breach of any duty while serving as treasurer of the District Health Unit. Therefore, I would suggest that any person appointed to fill the position of treasurer of the District Health Unit be compelled to file a separate official bond for the protection of District Health Unit funds.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.