

1121.

BOARD OF HEALTH—REGULATIONS PASSED MUST HAVE SIGNATURE OF MAYOR—IT IS A MINISTERIAL DUTY AND MANDAMUS WILL LIE TO COMPEL SIGNING—PRESIDENT PRO TEM MAY SIGN, WHEN—VETO POWER.

*SYLLABUS:*

1. *A regulation proposed by the board of health of a city for enactment cannot be validly passed without the signature of the mayor as president of the board of health; however, the mere physical act of signing is simply ministerial and not an exercise of discretion and mandamus will lie to compel its performance.*

2. *In the absence of the mayor as the presiding officer, the board of health of a city can validly enact regulations signed by the president pro tem as the presiding officer.*

3. *Despite the fact that a regulation adopted by a Board of Health intended for the general public is a legislative act amounting in substance to an ordinance, the veto power of the mayor, as provided for in Section 4234, does not extend to such regulations but is confined to the legislative acts of the council of a municipal corporation.*

COLUMBUS, OHIO, September 10, 1937.

HON. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR: I wish to acknowledge receipt of your communication of recent date in which you request my opinion on the following:

“This Department is in receipt of a letter from the Health Commissioner of the City of Mansfield, Ohio, in which he puts certain questions to this Department. The letter reads in part as follows:

‘Section 4413 of the Ohio Public Health Manual states that ordinances and regulations intended for the general public are adopted, advertised, recorded and certified as are ordinances of municipalities.

‘Question has arisen on a regulation which will come up before our City Board of Health in the near future. No satisfactory answer has come from legal authorities whom I have consulted. Would it be possible for you to obtain rulings for us from the State’s Attorney General on the following?

1. If the City Board of Health passes an ordinance or regulation intended for the general public and the Mayor of

the city, as chairman or president of the above Board by virtue of his office, refuses to sign the regulation would the regulation be considered to be legally enacted without his signature?

2. Considering that the above has come to pass, could the regulation be passed at another meeting over which another chairman presides and who is willing to sign the regulation?

3. Has the Mayor as chairman of the City Board of Health, power of veto over Board of Health regulations passed on and intended for the general public.'

Will you kindly give us an opinion on the questions raised in this letter?"

In order to decide the questions you have presented for my opinion, I must first consider the legislative effect of orders and regulations which the Legislature has empowered the Board of Health of a city to enact. Section 4413 of the General Code, provides in part as follows:

"The board of health of a city may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of diseases, and the prevention, abatement or suppression of nuisances. Orders and regulations not for the government of the board, but intended for the general public shall be *adopted*, advertised, recorded and certified as are ordinances of municipalities and the record thereof shall be given, in all courts of the state, the same force and effect as is given such ordinances."

From the foregoing statute, it is perfectly clear the Legislature intended that, in orders and regulations directed to the welfare of the general public, all the formalities attending the passage of an ordinance by a municipal council should be observed; and all such regulations should carry the same legislative substance as municipal ordinances. In short, if a regulation is passed in accordance with the requirements of Section 4413, General Code, *supra*, it thereby becomes in substance and effect a legislative act, and it is immaterial whether it is called an ordinance or a regulation. (See McQuillin's Municipal Corporation, Section 663). At this point it might be helpful to observe that the terms "adopt" and "pass" are used interchangeably (Section 4226, G.C.) and in Section 4413, General Code, *supra*, the word "adopted" is undoubtedly used as a synonym for "passed".

Since a regulation passed by a board of health which is intended

for the benefit of the general public becomes an ordinance in substance and effect, the statutes regulating the passage of ordinances regularly enacted by the councils of municipal corporations must necessarily apply. The Legislature has designated the Mayor as the President of the Board of Health in Section 4404 of the General Code, which provides in part as follows:

“The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office, \* \* \*.”

Section 4227 of the General Code, further provides:

“Ordinances, resolutions and by-laws shall be authenticated by the signature of the presiding officer and clerk of the council. Ordinances of a general nature, or providing for improvements shall be published as hereinafter provided before going into operation. No ordinance shall take effect until the expiration of ten days after the first publication of such notice. As soon as a by-law, resolution or ordinance is passed and signed, it shall be recorded by the clerk in a book to be furnished by the council for the purpose.”

Construing the two foregoing sections together, it is perfectly clear that the signature of the Mayor as President of the Board of Health must be attached to all regulations enacted by that body in order that such regulations be valid. However, the mere physical act of signing is simply ministerial and not an exercise of legislative discretion, and mandamus will lie to compel its performance. (See McQuillans' Municipal Corp. Section 617).

The authority of the board of health to adopt a regulation at a meeting presided over by the President pro tem in the absence of the Mayor as the regular presiding officer, is found in Section 4407, General Code, which provides in part as follows:

“The board of health in municipalities shall elect one of their number president pro tem who shall preside in the absence of the mayor, *and shall do and perform all duties incumbent upon the president.* \* \* \*” (Italics ours).

Although regulations passed by a City Board of Health intended for the general public are legislative acts and must be adopted, advertised, recorded and certified as are ordinances of municipalities, still such regulations are not ordinances passed by a municipal council. The veto power of the mayor includes only ordinances or resolutions passed by the council of a municipal corporation, as provided for in Section 4234, General Code, which reads as follows:

“Every ordinance or resolution of council shall, before it goes into effect, be presented to the mayor for approval. The mayor, if he approves it, shall sign and return it forthwith to council. If he does not approve it, he shall within ten days after its passage or adoption return it with his objections to council, or if council is not in session, to the next regular meeting thereof, which objections council shall cause to be entered upon its journal. The mayor may approve or disapprove the whole or any item of an ordinance appropriating money. If he does not return such ordinance or resolution within the time limited in this section, it shall take effect in the same manner as if he had signed it, unless council by adjournment prevents its return. When the mayor disapproves an ordinance or resolution, or any part thereof, and returns it to the council with his objections, council may, after ten days, reconsider it, and if such ordinance, resolution or item, upon such reconsideration is approved by the votes of two-thirds of all the members elected to council, it shall then take effect as if signed by the mayor. The provisions of this section shall apply only in cities.”

The foregoing statute cannot admit of any construction that would extend the veto power of the mayor to regulations adopted by a Board of Health, but must be strictly confined to the legislative acts of a municipal council.

In specific answer, therefore, to your questions in the order of their statement, it is my opinion that:

1. A regulation proposed by the board of health of a city for enactment cannot be validly passed without the signature of the mayor as president of the board of health; however, the mere physical act of signing is simply ministerial and not an exercise of legislative discretion and mandamus will lie to compel its performance.

2. In the absence of the mayor as the presiding officer, the board

of health of a city can validly enact regulations signed by the president pro tem as the presiding officer.

3. Despite the fact that a regulation adopted by a Board of Health intended for the general public is a legislative act amounting in substance to an ordinance, the veto power of the mayor, as provided for in Section 4234, does not extend to such regulations but is confined to the legislative acts of the council of a municipal corporation.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1122.

APPROVAL, BONDS OF JUNCTION CITY-JACKSON VILLAGE SCHOOL DISTRICT, PERRY COUNTY, OHIO—\$5,432.00.

COLUMBUS, OHIO, September 10, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Junction City-Jackson Village School  
Dist., Perry County, Ohio, \$5,432.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of deficiency bonds dated August 1, 1937, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*