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GENERAL HEALTH DISTRICT BOARD OF HEALTH:

1. MAY ENACT RULES AND REGULATIONS GOVERNING QUARANTINE OF PERSONS INFECTED WITH A COMMUNICABLE DISEASE.
2. MAY ENACT REGULATIONS GOVERNING QUARANTINE OF TUBERCULOSIS PATIENTS.
3. QUARANTINE—DEPENDS UPON REASONABLENESS OF PROPOSED REGULATION IN RESPECT TO LOCALE, PREVALENCE OF DISEASE, EXISTING CONTROL MEASURES AND FACT AND CIRCUMSTANCES—SECTION 4429 G. C.
4. HOME QUARANTINE — UNDER NORMAL CIRCUMSTANCES WOULD SEEM ARBITRARY AND UNREASONABLE—SECTION 4429 G. C.

SYLLABUS:

1. A general health district board of health may enact rules and regulations governing the quarantine of persons infected with a communicable disease.
2. A general health district board of health may enact regulations governing the quarantine of tuberculosis patients.
3. Whether a general health district board of health may impose a quarantine according to Section 4429, General Code, depends upon the reasonableness of the

proposed regulation in respect to locale, prevalence of the disease, existing control measures and the fact and circumstances peculiar to the particular case.

4. Under normal circumstances, in view of control measures now available, "home quarantine" of tuberculosis patients, according to Section 4429, General Code, would seem arbitrary and unreasonable.

Columbus, Ohio, August 29, 1949

Hon. Herbert R. Freeman, Prosecuting Attorney,
Huron County, Norwalk, Ohio

Dear Sir:

This will acknowledge receipt of your communication which reads as follows:

"As Prosecuting Attorney I am legal advisor for the Huron County General Health District. *Section 4429* of the *General Code*, reads as follows:

"*Quarantine of persons having or exposed to contagious disease.* When a case of smallpox, cholera, plague, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever or other communicable diseases declared by the board of health or state department of health to be quarantinable is reported within its jurisdiction, the board of health shall at once cause to be placed in a conspicuous position on the house wherein such disease occurs a quarantine card having printed on it in large letters the name of the disease within, and prohibit entrance to or exit from such house without written permission from the board of health, or shall enforce such restrictive measures as may be prescribed by the state department of health. No person shall remove, mar, deface, or destroy such quarantine card, which shall remain in place until after the patient has been removed from such house or has recovered and is no longer capable of communicating the disease, and the house and the contents thereof have been properly purified and disinfected by the board of health or treated in such manner as may be prescribed by the state department of health."

"I am informed that tuberculosis is generally among the medical profession considered a communicable disease. In your opinion may the local board of health by resolution declare tuberculosis to be quarantinable and thus impose a quarantine on cases of tuberculosis?"

As the rules and regulations of a general health district board of health are not adopted by resolutions, we will assume for purposes of this

opinion that any resolution by the board of health will presuppose the fulfillment of the statutory requirements of Section 1261-42, General Code.

Our initial determination with reference to your request depends upon an interpretation of Section 4429, General Code, which you include in your communication.

Tuberculosis, as such, is not mentioned in this section, but may very well fall within the classification of "other communicable diseases declared by the board of health or state department of health to be quarantinable."

With this in mind, we must determine whether tuberculosis is a "communicable disease."

Encyclopedia Americana, Volume 27, at page 123, says with reference to the manner of infection of tuberculosis:

"Strictly considered, the tubercle bacillus may enter the human body by inoculation, through the skin, by ingestion and by inhalation. * * * By far the most common manner of infection is the inhaling of contaminated air in the vicinity of the sick person."

Encyclopedia Britannica, Volume 22, at page 532, says:

"Man is liable to infection from two main sources, the first and infinitely the more important being infected persons and the second, milk from infected cows."

All authorities on the disease are uniform in holding that density of population with the opportunities for frequent and close contact with infected persons appears to be all important in the dissemination of the germ and the cause of the spread of the disease.

In view of these authorities and the generally accepted definition of the term "communicable," there seems little doubt but that tuberculosis can be communicated from one person to another and therefore comes within the classification known as "communicable disease."

It might then be questioned whether "board of health" as used in the statute refers to the general health district board of health.

Section 4429, General Code, employs the language "board of health or state department of health."

The State Department of Health was formerly known as the state board of health so "board of health" as used in the statute must refer to either municipal or district health boards. Section 1261-30, General Code, gives the district board of health all of the powers and duties which were

formerly and now are conferred upon the board of health of a municipality. Therefore, any doubts as to whom the legislature referred in the use of the term "board of health" must be resolved in favor of the contention that such a reference means the board of health of a general health district.

The powers which statute authorizes the district board of health to exercise are very broad and include the right to make such orders and regulations as it deems necessary for the public health. A review of the laws enacted for the purpose of protecting the people of the State from contagious diseases are about as broad as language can make them. They extend into every relation of life and come within the general police powers of the State.

The powers and duties of a general health district with reference to tuberculosis are discussed in Opinion No. 975, Opinions of the Attorney General for 1946, at page 376. The first branch of the syllabus of this opinion recites as follows:

"Section 1261-26, General Code, places upon boards of health the mandatory duty to provide for the prompt diagnosis and control of communicable diseases. Under that authority the board of health of a general health district is charged with the care and supervision of tuberculosis patients."

In addition to the power afforded the board of health through Section 4429, General Code, it would seem that the general delegation of power afforded by Sections 1261-26 and 1261-42, General Code, to take measures necessary to prevent the spread of contagious disease would also imply the power to provide for the isolation of persons afflicted with such a disease.

The general grant of power to general health districts is almost arbitrary in terms, but this power can not be exercised arbitrarily. It is always subject to the rule that such regulations and orders must be consistent with the law of the State and reasonable so far as they affect the general public or individual rights.

In *Froelich v. The City of Cleveland*, 99 O. S. 376, it was held in the third branch of the syllabus:

"The state and municipalities may make all reasonable, necessary and appropriate provisions to promote the health, morals, peace and welfare of the community. But neither the state nor a municipality may make any regulations which are unreasonable. The means adopted must be suitable to the end in view, must be

impartial in operation and not unduly oppressive upon individuals, must have a real and substantial relation to their purpose, and must not interfere with private rights beyond the necessities of the situation."

Thus the Supreme Court of Ohio has said the discretionary power to be exercised by the district board of health must rest upon reason.

And we are thus confronted with the problem of whether "home quarantine" of tuberculosis patients is a reasonable exercise of the police power.

Dr. Robert G. Lovell in his treatise on tuberculosis entitled "Taking the Cure" informs us that many months are required to effect a cure for the disease, and in many cases, a number of years of treatment are required. With this in mind, the reasonableness of "home quarantine" might well be questioned.

The same authority on the disease recommends sunlight, fresh air, and rest as the most important factors in the cure of the disease. Again it would seem impractical to confine a person with tuberculosis to his home where he cannot get the treatment necessary to be cured.

Stringent quarantine regulations for tuberculosis patients if effected through "home quarantine" may force the suffering patient into a position where he would have little opportunity of ever being cured.

The Legislature may have considered the impracticability of home quarantine through the General Code provisions for county district and state tuberculosis sanatoriums. It will be noted in passing that provisions for special hospitals for patients suffering from other communicable diseases have not been made.

Dr. Charles E. Lyght, Director of Health Education of the National Tuberculosis Association, discourages home care for tuberculosis patients and stresses the possibility of the spread of the disease to other members of the family and society.

Whether regulations may be reasonable which are contrary to the advice of those best qualified to say what is good or bad for tuberculosis patients may also be questionable.

Section 4429, General Code, says a placard with large letters must be posted designating the house of quarantine. There is no shame connected with tuberculosis. Anyone may contract it. But can it be denied that

publicity of this kind would be a source of social and economic embarrassment to the entire family of the patient?

The reasonableness of a regulation permitting "home quarantine" of tuberculosis patients would involve considerations with respect to locale, the prevalence of the disease, the control measures available, and the facts and circumstances peculiar to the particular case. To answer your specific question categorically would, in many cases, place an unconscionable price on personal liberty.

It is accordingly my opinion:

1. That a general health district board of health may enact rules and regulations governing the quarantine of persons infected with a communicable disease.

2. That a general health district board of health may enact regulations governing the quarantine of tuberculosis patients.

3. That whether a general health district board of health may impose a quarantine according to Section 4429, General Code, depends upon the reasonableness of the regulation in respect to locale, prevalence of the disease, and the facts and circumstances peculiar to the particular case.

4. That under normal circumstances, in view of control measures now available, "home quarantine" of tuberculosis patients, according to Section 4429, General Code, would seem arbitrary and unreasonable.

Respectfully,

HERBERT S. DUFFY,
Attorney General.