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SWIMMING POOL, PUBLIC — STATE DEPARTMENT OF HEALTH AUTHORIZED TO REQUIRE PLANS TO BE SUBMITTED TO IT FOR APPROVAL FOR SWIMMING POOL IN SO FAR AS PLANS RELATE TO WATER SUPPLY OR TREATMENT WORKS FOR PURIFICATION OF WATER — SECTION 1240 G. C.

SYLLABUS:

Under the provisions of Section 1240, General Code, the state department of health is authorized to require the plans for a public swimming pool, in so far as such plans relate to the water supply or treatment works for the purification of the water supply thereof, to be submitted to said department for approval.

Columbus, Ohio, February 26, 1945

Hon. Roger E. Heering, Director of Health
Columbus, Ohio

Dear Sir:

I acknowledge receipt of your communication requesting my opinion, and reading as follows:

> "Section 1240 of the General Code requires that the approval of the department of health be secured for all public water supplies and water purification or treatment works. The section further provides:
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> '* * * This act shall apply to water supply, sewerage, and purification or treatment works for water or sewerage of a municipality or part thereof, an unincorporated community, a county sewer district or other land outside of a municipal corporation or any publicly or privately owned building or group of buildings or place, used for the assemblage, entertainment, recreation, education, correction, hospitalization, housing or employment of persons, but shall not apply to water supply or sewerage or purification or treatment works for water or sewerage installed or to be installed for the use of a private residence or dwelling, or to water supply for industrial purposes and not intended for human consumption.'
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> I shall be glad to have your opinion as to whether or not, under the provisions of this and succeeding sections, the depart-

ment of health is authorized to require the submission and approval of plans and specifications for public swimming pools, including the source of water supply, methods of construction, etc., which would have a direct bearing on the public health aspects of the use of such swimming pools."

Section 1240, General Code, reads as follows:

"No city, village, county, public institution, corporation or officer or employe thereof or other persons shall provide or install a water supply or sewerage, or purification or treatment works for water supply or sewage disposal, or make a change in any water supply, water works intake, water purification works, sewerage or sewage treatment works until the plans therefor have been submitted to and approved by the state department of health. This act shall apply to water supply, sewerage, and purification or treatment works for water or sewage of a municipality or part thereof, an unincorporated community, a county sewer district or other land outside of a municipal corporation or any publicly or privately owned building or group of buildings or place, used for the assemblage, entertainment, recreation, education, correction, hospitalization, housing or employment of persons, but shall not apply to water or sewerage or purification or treatment works for water or sewage installed or to be installed for the use of a private residence or dwelling, or to water supply for industrial purposes and not intended for human consumption. In granting an approval authorized by this section the state department of health may stipulate such modifications, conditions and regulations as the public health may require. Any action taken by the director of health shall be a matter of public record and shall be entered in his journal. Whoever violates any provision of this section shall upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars for each offense, and a separate offense shall be deemed to have been committed for each period of thirty days such violation shall continue after such conviction."

As originally enacted in 99 O. L. p. 494, this section contained the language of the first sentence above quoted and then a provision relative to garbage disposal and liquid waste, but did not contain any of the provision set forth in your letter. The original section was codified and became Section 1240 of the General Code without change of phraseology. It was amended as appears in 111 O. L. p. 24, to its present form. The matter relating to garbage and industrial waste was taken out and embodied in supplementary sections.

I deem it of very great significance that the legislature saw fit to add the new matter contained in your communication. If we omit the irrelevant portions of that sentence and use only that part which directly bears on your question, the quotation which you set forth will be found to read as follows:

> "This act shall apply to water supply * * * of a * * * privately owned building or group of buildings or place, used for the assemblage, entertainment, recreation * * * of persons," etc.

It will be observed that the act is made to apply not only to a public water supply, but also to a water supply intended for a privately owned building or place used for entertainment or recreation.

A public swimming pool and its appurtenant buildings are certainly intended for entertainment and recreation. The provisions as to places of assemblage, entertainment, recreation, education, etc., evidently contemplate a use by the public as distinguished from facilities appurtenant to a private dwelling. This is affirmatively indicated by the provision that the act should not apply to a water supply to be installed for the use of a private residence or dwelling.

It might be argued that the words at the close of the sentence "not intended for human consumption" modify the entire sentence and therefore that the water supply for a swimming pool, not being intended for human consumption, would not fall within the purview of the act. It appears to me, however, that the words just quoted relate only to the final clause "or to water supply for industrial purposes and not intended for human consumption." The punctuation preceding that clause and the absence of any punctuation within it seem to me to make it clear that the exception relates merely to a water supply provided for an industrial plant for industrial purposes only, which of course would have no relation to public health, as it is not intended for human consumption.

The reason for and propriety of a regulation that would include the water supply for a public swimming pool are obvious when we consider, as a matter of common knowledge, that those who avail themselves of the privilege of such recreation and entertainment do constantly take the

water of the pool into their mouths and not infrequently swallow a portion thereof without intending to do so. Therefore, there are present all the dangers of disease arising from polluted water in the normal use of a swimming pool that could possibly be present in the use of polluted water drawn from a drinking font or household spigot.

It seems to be well settled that in the construction of the statutes relating to public health and conferring powers upon health authorities a liberal construction is to be employed. Thus it is stated in 25 Am. Jur. p. 291:

> "The general rule is that statutes delegating to subordinate governmental agencies and authorities the power to enact and enforce health regulations are to be liberally construed in order to effectuate the purpose of their enactment."

Very similar language is used in 39 C. J. S. p. 823.

It is also recognized that orders and regulations of a board of health are favored with a strong presumption of their validity. It is said in 39 C. J. S. p. 855:

> "Orders of the board of health made to prevent pollution are presumptively valid, and will be enforced, unless manifestly without just relation to public health, or constituting a plain invasion of constitutional rights."

On the same subject it is said in 25 Am. Jur. p. 301:

> "Moreover, every reasonable presumption should be indulged in favor of the validity of the action of health authorities. One who attacks a regulation or order of a health board has the burden of establishing its validity; and before an ordinance or regulation of a board of health can be said to be unreasonable, it should clearly so appear."

I realize we are not here dealing with the validity of regulations of boards of health, but the authorities last quoted do, in my opinion, further indicate the attitude of the law toward regulations designed to promote the public health, whether contained in statutes or in regulations adopted and promulgated by the health authorities.

In specific answer to your inquiry, it is my opinion that under the provisions of Section 1240, General Code, the state department of health

is authorized to require the plans for a public swimming pool, in so far as such plans relate to the water supply or treatment works for the purification of the water supply thereof, to be submitted to said department for approval.

Respectfully,

HUGH S. JENKINS

Attorney General