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1. HEALTH, DISTRICT BOARD OF — AUTHORIZED TO ENACT REGULATIONS RELATIVE TO REMOVAL, TRANSPORTATION AND DISPOSAL OF GARBAGE — TERMS, PROTECTION OF PUBLIC HEALTH—MAY NOT DISCRIMINATE IN FAVOR OF RESIDENTS AS AGAINST NON-RESIDENTS OF DISTRICT—SECTION 1261-42 GC.
2. REGULATION, DISTRICT BOARD OF HEALTH — TO MERELY FORBID ANY PERSON, FIRM, CORPORATION OR POLITICAL SUBDIVISION OUTSIDE OF COUNTY FROM TRANSPORTING OR DISPOSING WITHIN COUNTY OF ANY GARBAGE OR REFUSE, IS INVALID.

SYLLABUS:

1. A district board of health is authorized by Section 1261-42, General Code, to enact regulations relative to the removal, transportation and disposal of garbage, but such regulations must be designed by their terms to protect the public health, and must not discriminate in favor of residents as against non-residents of the district.

2. A regulation of a district board of health which merely forbids any person, firm, corporation or political subdivision outside the county from transporting thereto or disposing within such county of any garbage or refuse, is invalid.

Columbus, Ohio, June 3, 1953

Hon. Robert E. Cook, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

I have before me your letter, requesting my opinion, and reading as follows:

"I am enclosing a Regulation which has been proposed by the Portage County Board of Health to become one of their rules and regulations, as authorized by G. C. 1261-42.

"Since there is doubt in the minds of some of the members of the Board of Health as to whether the proposed Regulation is a legal exercise of their power under G. C. 1261-42, I would appreciate your opinion as to whether the proposed amendment may be adopted by the County Board of Health and become part of its regulations."

The regulation to which you refer, which your district board of health proposes to adopt, reads:

"It shall bet unlawful for any person, firm, or corporation or political subdivision outside of Portage County, Ohio, to transport, deliver or deposit garbage or refuse into or within the territory under the jurisdiction of the Board of Health of the General Health District of Portage County, Ohio, or to dispose of same by any means whatsoever within the Portage County General Health District."

The authority of a district board of health to adopt and enforce regulations having to do with the health of the public is found in Section 1261-42, General Code, which reads as follows:

"The board of health of a general health district may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances, and shall have the power to require that no human waste, animal waste, or household wastes from sanitary installations within the district be discharged into a storm sewer, open ditch or water course without a permit therefor having been first secured from the board of health of the health district under such terms and conditions as the board may from time to time require. * * *"

A study of this section makes it very clear that any regulation adopted by a board of health must have for its sole purpose the protection of the public health, and its validity will be tested in the first instance by the question whether it is intended to and does accomplish this purpose.

There is no question but that garbage can reach a condition that makes it a menace to the public health and therefore its collection and disposal may properly be regulated by the public authorities: and I am

clearly of the opinion that regulations of that character, designed to protect the public health, may be adopted and enforced by the council of a municipality or by a board of health. In *State, ex rel. Moock v. Cincinnati*, 120 Ohio State, 500, it was held :

“The adoption of regulations pertaining to health and sanitation, including the process of collection and disposal of garbage, is within the proper exercise of the police powers of the state and of its municipalities.”

In the course of the opinion it was said by Judge Jones :

“The overwhelming weight of authority, both state and federal, upholds the municipal right to regulate, supervise, and control sanitation, including the collection and disposal of garbage, under the police power of the city and state ; * * *”

This case upheld a contract with the City of Cincinnati, whereby the contracting party was to have the exclusive right to collect and haul to a farm outside the city, all garbage, which was to be fed to hogs.

Any ordinance or similar regulation, undertaking to protect the public health, must be such as will be conducive to that end. It is manifest that garbage, in order to be collected and properly disposed of must be transported in some manner. It would therefore be wholly unreasonable to attempt to prohibit its transportation. It would be quite proper for a board of health to provide some regulation as to the manner in which the removal and disposition should be accomplished, with such precautions as will tend to prevent the garbage while in transportation or in process of disposal from becoming a nuisance or menace.

It is said in 28 Ohio Jurisprudence, page 448, that it is a fundamental principle of law that all police regulations must be reasonable ; and they must not be arbitrary or oppressive. Citing *Froelich v. Cleveland*, 99 Ohio St., 376. In 20 Ohio Jurisprudence, page 542, we find this statement :

“A health law must have some relation to the end it seeks to accomplish, for personal rights and private property cannot be arbitrarily affected under the guise of police regulations.”

The principle suggested by this quotation is well illustrated by the decision and ruling in the case of *Weber v. Board of Health*, 148 Ohio St., 389. The facts in the case are also closely related to the situation that appears to be aimed at in the proposed resolution which you submit. The

plaintiff, Weber, a resident of Hamilton County, owned a farm in Butler County. He had for years collected garbage in Cincinnati and hauled it to his farm where he fed it to his hogs. The board of the general health district of Butler County passed a resolution undertaking to regulate the transportation and disposal of garbage in the district. Weber brought suit for a declaratory judgment holding the regulation unconstitutional and void so far as it prohibited the transportation of garbage, for the purpose of feeding swine or other animals, into or within the territory under the jurisdiction of the Board. The holding of the court as shown by the third branch of the syllabus was as follows:

“Under the provisions of Section 1261-42, General Code, the board of health of a general health district has a wide latitude in making and enforcing rules and regulations for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisance, but when such board passes a resolution which prohibits a business not unlawful in itself and which is susceptible to regulations which will prevent it from becoming either a health menace or a nuisance, such board transcends its administrative rule-making power and exercises legislative functions in violation of Section 1 of Article II of the Constitution of Ohio.”

It is a rule applicable to all legislation, whether state or local, that a statute or other measure must have uniform operation, and must not discriminate in favor of or against classes of people. An ordinance exacting a greater license fee from non-residents than from residents for the use of vehicles on streets, of the same kind, class and size, has been held to be unreasonably discriminatory. *Columbus v. Jeffrey*, 1 Ohio N.P. (N.S.), 265. And see generally, 28 Ohio Jurisprudence, 157. An ordinance or similar regulation may not discriminate against non-residents. In *McQuillin on Municipal Corporations*, Section 19.16 it is said:

“Constitutional protection of persons by guaranty of equal protection of the law extends to all persons, and includes non-residents and aliens. * * *

“Municipal legislation discriminating against nonresident business in favor of resident business is unconstitutional. Also, an ordinance which discriminates between residents and non-residents respecting a license tax is bad.”

It will be observed that the proposed regulation undertakes to forbid the transportation of any garbage or refuse into the territory under the

jurisdiction of the board of health of the general health district, and further undertakes to forbid the disposition of any garbage or refuse so brought into the district, by any means whatsoever, within said health district. It does not undertake to establish any methods or precautions that are to be observed in transporting or disposing of such garbage or refuse. In so far as I can discover, it establishes no rule or regulation which is designed to protect the public health.

Under the terms of the proposed regulation, even if garbage were transported in a receptacle that is hermetically sealed, and upon being brought into the district were immediately destroyed by burning or burying, so as to be wholly inoffensive, yet such transportation and disposal would be unlawful. At the same time a resident of the district might with impunity haul his garbage in an open wagon and dump it where he pleases.

It seems plain that the operative effect of the proposed regulation would be solely upon political subdivisions located, and persons residing outside the district. It is obvious that what would be unlawful for a political subdivision or individual resident outside the district would be quite permissible and legitimate for those political subdivisions situated, and individuals residing within the territory of the district. It is well known that cities and villages have to take steps to collect and dispose of their garbage and other refuse. The methods of disposal in common practice include incineration, burying, and feeding to hogs. None of these processes is ordinarily carried on within the limits of the corporation. It is common practice in cities, particularly, to acquire lands located outside of their limits for the purpose of garbage disposal. They are given authority by the statutes to acquire such lands and may, if deemed necessary, acquire them by condemnation *outside* of the corporate limits. See Sections 3677 and 3678, General Code.

Accordingly, if a city or village owns a tract of ground located outside of its corporate limits, whether within the same county or in some other county, it should have the right to convey its garbage to that land and there dispose of it in a sanitary manner. I do not believe any authority can be found whereby a board of health could prevent this from being done.

Obviously, the board would have the right, in the interest of the public health, to surround these processes with such regulations as are reasonable,

to prevent a nuisance arising, or to guard against imperiling the public health.

Because the proposed regulation does not undertake to establish any measure designed to protect the public health, and because it undertakes to discriminate against certain classes of persons and corporations, it is my opinion that a district board of health would have no power to enact or enforce it.

You are accordingly advised :

1. A district board of health is authorized by Section 1261-42, General Code, to enact regulations relative to the removal, transportation and disposal of garbage but such regulations must be designed by their terms to protect the public health, and must not discriminate in favor of residents as against non-residents of the district.

2. A regulation of a district board of health which merely forbids any person, firm, corporation or political subdivision outside the county from transporting thereto or disposing within such county of any garbage or refuse, is invalid.

Respectfully,

C. WILLIAM O'NEILL
Attorney General