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HEALTH, DIRECTOR OF—DUTY TO FURNISH WITHOUT REQUEST AND FREE OF CHARGE, PUBLIC HEALTH MANUAL TO EVERY HEALTH COMMISSIONER IN STATE—SECTION 1236-1 G. C.—SUCH DUTY NOT AFFECTED BY SECTION 154--66 G. C.

SYLLABUS

Section 154-66, General Code, does not affect the duty of the Director of Health to furnish without request and free of charge a public health manual to every health commissioner in the state as prescribed by Section 1236-1, General Code.

Columbus, Ohio, March 30, 1944

Dr. R. H. Markwith, Director of Health  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 1236-1, General Code (enacted 1917, amended 1939) provides:

‘The director of health shall publish and distribute, at least every five years and commencing

with the passage of this act, to every health commissioner in the state a public health manual which shall contain all laws relating to the powers and duties of health officials, the sanitary regulations adopted by the public health council, and such other information and instruction as he may deem advisable.\* \* \*

The Administrative Procedure Act contains a section which reads as follows:

'154-66. It shall be the duty of each agency to compile currently, publish, and at all times have available for distribution in book or pamphlet form all laws administered by it, all rules of general and uniform operation promulgated by it, and those sections of the General Code comprising the administrative procedure act with which the agency is required to comply. Such book or pamphlet shall be furnished to any person who requests it upon payment of a charge not to exceed the actual cost of printing said book or pamphlet. Failure to furnish such book or pamphlet shall not invalidate any action of the agency.'

A new public health manual is being prepared which contains the Administrative Procedure Act; the statutes providing for the creation, organization, powers and duties of the Ohio Department of Health and of city and general health districts; such other statutes as relate, directly or indirectly, to public health and sanitation procedures which are general or enforceable by another state or local agency, and the regulations adopted by the Public Health Council which constitute the Ohio Sanitary Code.

As section 1236-1, General Code, requires that 'The director of health shall publish and distribute, \* \* \* to every health commissioner in the state a public health manual,' and section 154-66, General Code, provides that the book or pamphlet containing the statutes and regulations 'be furnished to any person who requests it upon payment of a charge not to exceed the actual cost of printing \* \* \*,' I would appreciate being advised if the forthcoming public health manual may be sent to health commissioners without first receiving a request and payment of the fixed cost thereof, or if the manual may be sent to health commissioners only upon request and the payment of the cost of printing."

Section 1236-1, General Code, in so far as applicable to your question, is correctly quoted in your letter, and Section 154-66, General Code, is correctly quoted in full. Section 1236-1, General Code, unquestionably requires you to publish and distribute to every health

commissioner in the state a public health manual as prescribed in the section, and no charge is prescribed therefor by law. Unless, therefore, this section is impliedly repealed by Section 154-66, General Code, you should furnish the various health commissioners in the state with a public health manual as prescribed in Section 1236-1, General Code, and should make no charge therefor. It is therefore necessary to determine whether there is any implied repeal of the provisions of Section 1236-1, General Code, in Section 154-66, General Code.

Repeals by implication are looked upon by the courts with disfavor and will be avoided if there is any other reasonable construction. See 37 O. Jur., 401, Section 140. In the same work, at pages 397, 398 and 399, in Section 136, it is said:

“It is not sufficient, in order to effect a repeal by implication that a later act is different from a former one, or that the subsequent statute covers some of the cases provided for by the former. It must further appear that the later act is contrary to, or inconsistent with, the former in order to justify the conclusion that the first is so repealed. Moreover, difficulty in reconciliation does not necessarily call for a repeal by implication. Except when an act covers the entire subject-matter of earlier legislation, is complete in itself, and is evidently intended to supersede the prior legislation on the subject, it does not by implication repeal an earlier act on the same subject, unless the two are so clearly inconsistent and repugnant that they cannot, by a fair and reasonable construction, be reconciled and effect be given to both. If they can stand together or if both can be enforced concurrently, there is no implication of a repeal.”

When these principles of statutory construction are applied, the answer to your question is clear. Section 1236-1, General Code, is still in force and you are required to furnish the public health manual prescribed therein to all health commissioners in the state free of charge and without any request being made therefor by such health commissioners. As to all other persons, Section 154-66, General Code, is applicable and such manual should be furnished to them only upon request and payment of the proper charge.

Respectfully,

THOMAS J. HERBERT  
Attorney General