1921.

HEALTH, STATE DEPARTMENT OF — RESPONSIBILITY LODGED IN SAID DEPARTMENT FOR PUBLIC HEALTH SERVICE WITHIN STATE OWNED PROPERTY—DUTY AS TO RULES AND REGULATIONS: CONTRACTS, PLUMBING, SANITATION, SANITARY EQUIPMENT, DRAINAGE, QUARANTINE — COOPERATION AND ENFORCEMENT: PUBLIC HEALTH COUNCIL, LOCAL DISTRICT BOARDS OF HEALTH AND OFFICIALS, OFFICERS OF STATE INSTITUTIONS, POLICE OFFICERS, SHERIFFS, CONSTABLES, ETC., OF STATE, COUNTY, CITY OR TOWNSHIP AND EMPLOYES — LOCAL DISTRICT BOARDS OF HEALTH HAVE NO JURISDICTION OVER STATE OWNED PROPERTY IN THEIR DISTRICTS, OTHER THAN ENFORCEMENT OF ORDERS OF STATE DEPARTMENT OF HEALTH.

SYLLABUS:

1. *The responsibility for public health service on and within state owned property rests primarily with the State Department of Health.*

2. *It is the duty of the State Department of Health to adopt rules and regulations governing the installation of plumbing and sanitary equipment in buildings located on state owned property, and to see that such rules and regulations are followed.*

3. *Plans and specifications for all sanitary equipment or drainage to be installed in buildings located on state owned property should first be submitted to, and approved by the State Department of Health before the contract for the installation of such sanitary equipment or drainage is let.*

4. *Such sanitary regulations and rules relating to public health, sani-*

tation and quarantine as may be deemed necessary to protect and preserve the public health and prevent the spread of communicable and other disease applicable generally throughout the state, and especially to and within state owned buildings and property, should be adopted by the Public Health Council, and it is the duty of the State Director of Health to administer the rules and regulations so adopted.

5. *The Director of Health, in his administration of the laws and regulations adopted by the Public Health Council relating to public health, quarantine and sanitation on state owned property or elsewhere, may call upon local district boards of health and officials, officers of state institutions, police officers, sheriffs, constables or other law enforcement officers in the state or any county, city or township, to assist in such administration.*

6. *It is the duty of local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables and other law enforcement officers and employes of any county, city, or township to enforce at the instance of the State Department of Health, the quarantine and sanitary rules and regulations adopted by the said department.*

7. *Local district boards of health and officials have no general jurisdiction over state owned property in their respective health districts, and no duties with respect to public health service or sanitary and quarantine regulations on or within such property other than to enforce, when called upon, the rules, regulations and orders with respect to public health service, sanitation and quarantine adopted by the State Department of Health. Opinions of the Attorney General for* 1933, *page* 1214, *approved and followed.*

Columbus, Ohio, February 27, 1940.

R. H. Markwith, M. D., Director of Health,
Columbus, Ohio.

Dear Dr. Markwith:

I have your request for my opinion which reads as follows:

> "On April 6, 1929, the General Assembly passed an Act (O. L., 113 p. 518) accepting, under the will of Hayward Kendall, late of Cleveland, Ohio, a tract of land in Boston township, Summit county, for public park purposes. This park was to be under the supervision of the Board of Control of the Ohio Agricultural Experiment Station. In an Act passed June 8, 1933, (O. L., 115

p. 387) the supervision of this park was transferred to the Akron Metropolitan Park Board. This property has been developed by the Park Board—one of the developments being the 'Happy Day Camp.'

Question now arises as to the responsibility for public health services on this property. The Summit County General Health District has adopted general sanitary regulations which include plumbing installation and inspection.

Should the plumbing installed on this property be inspected by the general health district plumbing inspector, or by the state plumbing inspector, under direction of the director of health?

If this park site is not under the jurisdiction of the general health district, who is responsible for the maintenance of general sanitary conditions, including the control of communicable diseases and other procedures that are the direct responsibility of a local health department? The state has made no provision whereby such services can be supplied by the State Department of Health.

In answering this query, I shall be glad if you will keep in mind the thousands of acres of land in various parts of the state that have been acquired by the Department of Agriculture, the Division of Conservation, the State Department of Highways, and other state and federal agencies."

With respect to public health service upon the lands referred to in the first paragraph of your letter, it appears that this land was by the terms of the last will and testament of Hayward Kendall devised to the State of Ohio for public park purposes subject to certain restrictions, reservations, limitations and conditions which are not important so far as this inquiry is concerned.

By Act of the General Assembly of Ohio, passed in 1929, this gift was accepted in accordance with its terms (113 O. L., 518). In Section 2 of this Act, the Board of Control of the Ohio Agricultural Experiment Station was designated as the agency of the state which was thereby authorized and directed to take possession of the said property and to supervise, manage and control it in such manner as to carry out the purposes for which it was given, subject to the restrictions, limitations and conditions originally attached thereto. In a later Act of the General Assembly in 1933 (115 O. L., 387), Section 2 of the said Act of 1929 was amended by the terms of which amendment the control and management of this property was transferred from the Board of Control of the Ohio Agricultural Experiment Station to the Park Commission of the Akron Metropolitan Park District. The pertinent part of this amended Section 2 reads as follows:

"Sec. 2.—The Board of Park Commissioners of the Akron Metropolitan Park District is hereby designated as the agency of the state to supervise, manage and control such park and administer the same for public park purposes according to law and in keeping with the requirements imposed upon the use and administration thereof by the will of the said Hayward Kendall, deceased."

It clearly appears, upon consideration of the provisions of the will of Hayward Kendall, whereby the lands in question were devised to the State of Ohio for park purposes, and the terms of the Act of 1929 accepting the gift and designating the administrative agency to manage, supervise and control the said property in keeping with the object of the gift and the restrictions and limitations imposed thereon by the original donor, which administrative agency was later changed by the Act of 1933, to the Park Commission of the Akron Metropolitan Park District, that the title to said property originally vested upon its due acceptance by the Act of 1929, in the State of Ohio and that this title still remained there after the administrative agency charged with the management and control of the property was changed by the Act of 1933, as the mere designation of an agency to control and manage the property does no affect the title or ownership of the property. Nothing has occurred since that time to divest the State of Ohio of the title to this property, and the title is therefore now in the State of Ohio.

So far as your inquiry is concerned, the status of this property is no different than that of any property acquired by the State Department of Agriculture, State Division of Conservation, the State Department of Highways, or any other state agency whereby property is acquired for state purposes in such manner that title vests in the State of Ohio. The inquiry therefore resolves itself into the question as to where the responsibility rests for public health service and general sanitary conditions, including control of communicable diseases and other health problems, and plumbing in institutions on state owned property.

For many years there has existed a State Board of Health or State Department of Health created and functioning by virtue of successive acts of the General Assembly of Ohio. Upon the adoption of the Administrative Code in 1921, there was created the office of state "Director of Health" the incumbent of which was charged with the administration of the State Department of Health (Section 154-3, General Code). By the terms of Section 154-43, General Code, included as a part of the so-called Administrative Code, the State Department of Health was granted all the powers and charg-

ed with all the duties then vested by law in the then existing State Department of Health, the Commissioner of Health, the Public Health Council and the State Inspector of Plumbing.

The powers and duties of the State Department of Health, the State Commissioner of Health, the Public Health Council and the State Inspector of Plumbing at the time of the creation of the State Department of Health as one of the departments of state government, and the office of Director of Health under the provision of the so-called Administrative Code were at that time contained in Sections 1232 et seq. of the General Code of Ohio, and these statutes with some minor changes made by later amendments, now contain the law relative to the present existing powers and duties of the State Department of Health, consisting of the Director of Health and the Public Health Council. The duties of the Director of Health are set forth in Section 1233, General Code, which reads as follows:

> "The director of health shall perform all executive duties now required by law of the state board of health and the secretary of the state board of health, and such other duties as are incident to his position as chief executive officer. He shall administer the laws relating to health and sanitation and the regulations of the state department of health. He shall prepare sanitary and public health regulations for consideration by the public health council and shall submit to said council recommendations for new legislation. The director of health shall sit at meetings of the public health council but shall have no vote."

By the terms of Section 1234, General Code, it is provided that there shall be a Public Health Council to consist of six members appointed by the Governor, at least three of whom shall be licensed physicians. The powers and duties of this council are prescribed in Section 1235, General Code, which reads as follows:

> "It shall be the duty of the public health council and it shall have the power:
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> (a) To make and amend sanitary regulations to be of general application throughout the state. Such sanitary regulations shall be known as the sanitary code.
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> (b) To take evidence in appeals from the decision of the director of health in a matter relative to the approval or disapproval of plans, locations, estimates of cost or other matters coming before the director of health for official action. In the hearing of such appeals the director of health may be represented in person or by the attorney general.

(c) To conduct hearings in cases where the law requires that the state department of health shall give such hearings; to reach decisions on the evidence presented, which shall govern subsequent actions of the director of health with reference thereto;

(d) To prescribe by regulations the number and functions of divisions and bureaus and the qualifications of chiefs of divisions and bureaus within the state department of health;

(e) To enact and amend by-laws in relation to its meetings and the transaction of its business;

(f) To consider any matter relating to the preservation and improvement of the public health and to advise the state director of health thereon with such recommendations as it may deem wise.

The public health council shall not have nor exercise executive or administrative duties."

The general powers and duties of the State Department of Health are set out in Section 1237, General Code, which reads as follows:

"The state board of health shall have supervision of all matters relating to the preservation of the life and health of the people and have supreme authority in matters of quarantine, which it may declare and enforce, when none exists, and modify, relax or abolish, when it has been established. It may make special or standing orders or regulations for preventing the spread of contagious or infectious diseases, for governing the receipt and conveyance of remains of deceased persons, and for such other sanitary matters as it deems best to control by a general rule. It may make and enforce orders in local matters when emergency exists, or when the local board of health has neglected or refused to act with sufficient promptness or efficiency, or when such board has not been established as provided by law. In such cases the necessary expense incurred shall be paid by the city, village or township for which the services are rendered."

Prior to the enactment of the so-called Administrative Code, whereby the State Department of Health was created as one of the administrative departments of state government to which were transferred the duties of the State Inspector of Plumbing, as noted above, there had existed by force of Section 1261-2, General Code, the office of State Inspector of Plumbing, filled by appointment made by the then existing State Board of Health. This statute was at that time amended so as to empower the State Board of Health to appoint such number of plumbing inspectors as the interests of the work require and the appropriations for such inspectors will permit. The powers and duties of the State Inspector of Plumbing were at that time set forth in Sections 1261-3, et seq., General Code, which statutes have not since been amended. Section 1261-3, General Code, reads as follows:

> "It shall be the duty of said inspector of plumbing as often as instructed by the state board of health, to inspect any and all public or private institutions, sanitariums, hospitals, schools, prisons, factories, workshops, or places where men, women or children are or might be employed, and to condemn any and all unsanitary (insanitary) or defective plumbing that may be found in connection therewith, and to order such changes in the method of construction of the drainage and ventilation, as well as the arrangement of the plumbing appliances, as may be necessary to insure the safety of the public health.
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> Such inspector shall not exercise any authority in municipalities or other political subdivisions wherein ordinances or resolutions have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof."

The immediately succeeding sections of the General Code make other provisions with respect to the powers and duties of the State Board of Health in connection with the installation of plumbing. Without quoting these sections it is sufficient to note that the jurisdiction of the State Department of Health with respect to plumbing is statewide and applies to any building however owned or wherever located in the State of Ohio. In Section 1261-6, General Code, it is provided as follows:

> "No plumbing work shall be done in this state in any building or place coming within the jurisdiction of the state inspector of plumbing, except in cases of repairs or leaks in existing plumbing, until a permit has been issued by the state inspector of plumbing and the executive officer of the state board of health. * * *"

Other powers and duties of the State Board of Health not pertinent to the present inquiry are set out in other statutes.

For purposes of local health administration throughout the state provision was made by what is commonly referred to as the Hughes Act (108 O. L., Pt. II, p. 236) as amended by the so-called Griswold Act (108 O. L., Pt. II, p. 1085) for health districts. These aforesaid Acts of the General Assembly were passed in 1919, and were in force at the time of the enactment of the so-called Administrative Code, in 1921, have been codified and still exist as Sections 1261-16 et seq. of the General Code of Ohio. Said Section 1261-16, General Code, reads as follows:

> "For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act shall be known as and hereinafter referred to as a city health district. The townships and vil-

> lages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district."

By force of the above statute, it has been held that health districts throughout the state exist as separate subdivisions of the state for the purposes of local health administration. State ex rel. Hanna v. Spitler et al., 47 O. App., 114; Board of Health v. State, 40 O. App., 77; State ex rel. Burns v. Clark, 30 N. P. (N. S.) 243; Opinions of the Attorney General for 1930, pages 210 and 1348; for 1933, pages 1381 and 1679; for 1937, page 2269.

With respect to each of said classes of districts—city health districts and general health districts—provision is made by statute for the appointment of local boards of health, health commissioners and district advisory councils in general health districts, with power to adopt such regulations and make such orders as are deemed necessary for the preservation of the public health, the prevention and restriction of communicable and other types of disease, and the prevention, abatement and suppression of nuisances within the district. Provision is also made for the carrying out and rendering effective of such orders and regulations by local district officials and employes.

State owned property of whatever class or nature necessarily lies in either a city or a general health district, and the question arises as to just what authority is possessed by and what powers are vested in these local district officials and employes with respect to the adoption and enforcement of health and sanitary regulations upon and within such state owned property.

This question was considered by a former Attorney General in an opinion which will be found in the reported Opinions of the Attorney General for 1933, page 1214. It was there held in the syllabus of the opinion that:

> "Neither local district boards of health nor local health commissioners have any general jurisdiction over state owned property in their political subdivision."

The above 1933 opinion is predicated upon the well established principle of law that the state is not bound by general regulatory provisions contained in statutes adopted in pursuance of the state's police power unless it is expressly so provided. This rule has been uniformly followed in Ohio, and quite generally elsewhere.

State ex rel. v. Capellar, 39 O. S., 207;
State ex rel. Jones v. Brown, Secretary of State, 112 O. S., 590;
Kentucky Institution for the Blind v. City of Louisville, 123 Ky., 767;
In re. Willard Parker Hospital, 217 N. Y., 1;
Board of Education v. City of St. Louis, 267 Mo., 356;
City of Milwaukee v. McGregor, 140 Wisc., 35;
Opinions of the Attorney General for 1931, page 1111;
Opinions of the Attorney General for 1932, page 527.

In the course of the said opinion, after reference is made to the above principle of law and to the law creating health districts and providing for local boards of health and health commissioners for such districts, the then Attorney General said:

> "The principle is that a state when creating such political subdivision does not cede to them any control of the state's property situated within them. Such subdivision governs in the limited manner and in the territory that is expressly, or by necessary implication, granted to it by the state.
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> Since state owned institutions are not expressly included nor by necessary implication included in the general health statutes relating to city district boards of health, it is my opinion that such boards have no jurisdiction over the state owned buildings or grounds. It was evidently the intent of the legislature to leave the health regulation of state owned buildings and grounds to the state officers having supervision of such property, except those quarantine and sanitary rules and regulations adopted by the state board of health."

In view of the principle of law referred to, and the observations of the Attorney General in his 1933 opinion, I am clearly of the opinion that the responsibility for public health services on and within state owned property rests with the State Department of Health. However, local health officials as well as other local officials are not entirely absolved under the law from any duties whatever with respect to public health and sanitation, including the installation of plumbing on state owned property.

Under Section 1235, General Code, and cognate statutes, the State Department of Health, through the State Public Health Council is authorized and directed to adopt such public health regulations as to sanitation or any other matter relating directly or indirectly to the preservation and improvement of the public health, as may be deemed proper and necessary, and make

them applicable generally to all the territory and property in the state or specifically to state owned property. Section 1261-3, General Code, expressly makes it the duty of plumbing inspectors in the State Department of Health to inspect the plumbing and plumbing appliances in all public or private institutions which of course, would include state owned buildings and institutions, inasmuch as it is a direction to a state agency and includes all public as well as private institutions, and to order any changes in the method of construction of the drainage and ventilation as may be deemed necessary for the preservation and safety of the public health. The carrying out and enforcement of such orders and regulations as may be made by the State Department of Health through any of its divisions or agencies is expressly charged by law to local officials by Section 1238, General Code, which reads as follows:

> "Local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables and other officers and employes of the state or any county, city or township, shall enforce the quarantine and sanitary rules and regulations adopted by the state board of health."

It is also expressly provided by statute that it shall be the duty of the Health Commissioner in general health districts to carry out all orders of the State Department of Health. Section 1261-19, General Code, provides inter alia, with respect thereto:

> "* * The district health commissioner shall be the executive officer of the district board of health and shall carry out all orders of the district board of health and of the state department of health. * *"

In conclusion, I am of the opinion that:

1. The responsibility for public health service on and within state owned property rests primarily with the State Department of Health.

2. It is the duty of the State Department of Health to adopt rules and regulations governing the installation of plumbing and sanitary equipment in buildings located on state owned property, and to see that such rules and regulations are followed.

3. Plans and specifications for all sanitary equipment or drainage to be installed in buildings located on state owned property should first be sub-

mitted to, and approved by the State Department of Health before the contract for the installation of such sanitary equipment or drainage is let.

4. Such sanitary regulations and rules relating to public health, sanitation and quarantine as may be deemed necessary to protect and preserve the public health and prevent the spread of communicable and other disease applicable generally throughout the state and especially to and within state owned buildings and property should be adopted by the Public Health Council, and it is the duty of the State Director of Health to administer the rules and regulations so adopted.

5. The Director of Health, in his administration of the laws and regulations adopted by the Public Health Council relating to public health, quarantine and sanitation on state owned property or elsewhere, may call upon local district boards of health and officials, officers of state institutions, police officers, sheriffs, constables or other law enforcement officers in the state or any county, city or township, to assist in such administration.

6. It is the duty of local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables and other law enforcement officers and employes of any county, city, or township to enforce at the instance of the State Department of Health, the quarantine and sanitary rules and regulations adopted by the said department.

7. Local district boards of health and officials have no general jurisdiction over state owned property in their respective health districts and no duties with respect to public health service or sanitary and quarantine regulations on or within such property other than to enforce, when called upon, the rules, regulations and orders with respect to public health service, sanitation and quarantine adopted by the State Department of Health. Opinions of the Attorney General for 1933, page 1214, approved and followed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.