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1. HEALTH, BOARD OF, CITY DISTRICT—AUTHORIZED TO MAKE NECESSARY REGULATIONS FOR PUBLIC HEALTH AND PREVENTION OR RESTRICTION OF DISEASE—SECTION 4413 G. C.—BOARD NOT AUTHORIZED TO FIX PENALTIES FOR VIOLATION SUCH REGULATIONS—SECTION 4414, GENERAL CODE.

2. WHERE CITY HAS BUILDING DEPARTMENT OR OTHERWISE REGULATES ERECTION OF BUILDINGS—CITY COUNCIL, BY ORDINANCE, APPROVED BY BOARD OF HEALTH, MUST REGULATE AS TO LOCATION, CONSTRUCTION AND REPAIR OF WATER-CLOSETS, PRIVIES, CESSPOOLS, SINKS, PLUMBING AND DRAINS—SECTION 4420, GENERAL CODE.

3. PLUMBING INSTALLATION, COUNTY COURT HOUSE OR JAIL—COUNTY COMMISSIONERS MUST PAY FEE FOR PERMITS—DULY LICENSED PLUMBER.

4. CITY BOARD OF HEALTH—NO POWER TO REQUIRE JANITOR EMPLOYED BY COUNTY TO OBTAIN PLUMBER'S LICENSE—JANITOR EMPLOYED BY COUNTY COMMISSIONERS MUST COMPLY WITH CITY ORDINANCE OR HEALTH REGULATIONS AS TO PLUMBERS' LICENSE.

5. NO AUTHORITY FOR COUNTY COMMISSIONERS TO PAY FROM COUNTY FUNDS COSTS OF PLUMBERS' LICENSE FOR JANITOR.

SYLLABUS:

1. The board of health of a city district is authorized by Section 4413, General Code, to make such regulations as it deems necessary for the public health and the prevention or restriction of disease, but the penalties for violation of such regulations are fixed by Section 4414, General Code, and such board is not authorized to fix such penalties.

2. In a city having a building department or otherwise regulating the erection of buildings, regulations concerning the location, construction and repair of water-closets, privies, cesspools, sinks, plumbing and drains, must, under the provisions of Section 4420, General Code, be enacted by ordinance of the city council, and such regulations must be such as are approved by the board of health of said city.

3. Where there is a city ordinance or lawfully adopted health regulation requiring permits to be taken out for plumbing installation, the county commissioners must procure such permits for plumbing installation in the county court house or jail located in such city, and pay the stipulated fee therefor, and, if such ordinance or regulation so requires, must have such work done by a duly licensed plumber.

4. A city board of health has no power to require that a person employed by the county as janitor obtain a plumber's license. If, however, the county commissioners see fit to have a janitor employed by them do plumbing in the court house or jail, such janitor must comply with an ordinance or health regulation of such city requiring plumbers to secure a license.

5. The county commissioners are without authority to pay out of county funds the cost incurred by their janitor in securing a license authorizing him to do plumbing.

Columbus, Ohio, March 13, 1943.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

I have your request for my opinion, reading as follows:

"We are enclosing copy of an ordinance adopted by the board of health of the city of Mansfield, providing for regulating and governing plumbing in said city.

The court house and the jail of Richland county are located within the limits of the city of Mansfield; and in the employ of the county as janitor is a person who does all repairing and installation of new plumbing in the court house and jail.

According to the ordinance permits for which certain fees are charged must be obtained for all plumbing and such plumbing may only be done by a person holding a plumber's license therein provided for.

May we respectfully request your opinion on the following:

Question: Is the ordinance presented a valid ordinance for a city board of health to pass?

In the event you hold it is a valid ordinance:

1. May the city board of health compel the county commissioners to obtain permits for any plumbing to be done at the court house and jail, and require that the county pay the fees for such permits?

2. May the city board of health require that the person employed as janitor by the county commissioner, obtain a plumber's license before doing plumbing work at the court house or jail; and if so, may the license fee of such person be paid by the county commissioners from the general fund in the county treasury?"

Submitted with your letter is an ordinance adopted December 17, 1936, by the board of health of the city of Mansfield.

Considering first the validity of this ordinance, I call attention to certain sections of the General Code which I consider pertinent to the question.

Section 4413, General Code, reads as follows:

"The board of health of a city 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. Orders and regulations not for the government of the board, but intended for the general public shall be adopted, advertised, recorded and certified as are ordinances of municipalities and the record thereof shall be given, in all courts of the state, the same force and effect as is given such ordinances: Provided, however, that in cases of emergency caused by epidemic of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording and certifying."

Section 4414 provides:

> "Whoever violates any provision of this chapter, or any order or regulation of the board of health made in pursuance thereof, or obstructs or interferes with the execution of such order, or wilfully or illegally omits to obey such order, shall be fined not to exceed one hundred dollars or imprisoned for not to exceed ninety days, or both, but no person shall be imprisoned under this section for the first offense, and the prosecution shall always be as and for a first offense, unless the affidavit upon which the prosecution is instituted, contains the allegation that the offense is a second or repeated offense."

The provisions of Section 4420 also have a bearing on the question as to the validity of this ordinance. That section reads as follows:

> "The board of health shall abate and remove all nuisances within its jurisdiction. It may by order therefor compel the owners, agents, assignees, occupants, or tenants of any lot, property, building or structure to abate and remove any nuisance therein, and prosecute them for neglect or refusal to obey such orders. *Except in cities having a building department, or otherwise exercising the power to regulate the erection of buildings,* the board of health may regulate the location, construction and repair of water-closets, privies, cesspools, sinks, plumbing and drains. *In cities having such departments* or exercising such power, *the council* by ordinance shall prescribe such rules and regulations *as are approved by the board of health,* and shall provide for their enforcement." (Emphasis mine.)

Prior to the passage of the Hughes-Griswold acts in 1919, the statutes relating to boards of health in municipalities were found in Chapter II of Title 12, being part of the Municipal Code and codified as Section 4404, et seq. of the General Code. Up to that time the matter of public health was regarded as being largely in the control of the municipality and the board of health of a city was a part of the municipal government. The Hughes-Griswold act, so-called, passed April 17, 1919, 108 O. L. 236, reorganized the public health system of the state, for purposes of local administration, by enacting new sections which were codified as Sections 1261-16 to 1261-43, inclusive, and by amending Sections 4404, 4405, 4408, 4409, 4410, 4413, 4429, 4436, 4437, and 4476 of Chapter II, to which reference has been made.

By the first section of the act, which became Section 1261-16, the state was divided for the purpose of local health administration into health districts; each city which had at the last preceding census a population of 25,000, or more, was to constitute a health district to be known

as a municipal health district. The balance of the municipalities, together with the townships, were to constitute a general health district.

Later at the same session of the Legislature, this act was amended as shown in 108 O. L., Pt. 2, p. 1085, and Section 1261-16 was so changed as to make every city in the state a city health district, leaving the townships and the villages in each county to constitute what was known as a general health district.

Section 1261-30 provides:

> "The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act (General Code, sections 1261-16 to 1261-43 and 1245 et seq.). The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

The manifest purpose of this act was to take the control of health matters largely out of the hands of municipalities and other local bodies and place it directly under the state through the creation of these health districts which, while in some cases co-extensive with municipalities, especially as concerns city boards of health, are nevertheless regarded as independent of the municipalities as such.

In holding the Hughes-Griswold act constitutional, the Supreme Court, in the case of State ex rel. v. Zangerle, 103 O. S. 566, said:

> "1. The general assembly in the exercise of the legislative power conferred by the constitution has authority to enact general laws prescribing health, sanitary and similar regulations effective throughout the state; and to provide such reasonable classifications therein as may be deemed necessary to accomplish the object sought.
>
> 2. The peace, morals, health and safety of the people are a matter of concern to the state, and when the state has enacted general laws providing sanitary and similar regulations effective throughout the state the different subdivisions of the government may be required to contribute to the carrying out of the legislation."

In the case of State ex rel. v. Underwood 137 O. S. 1, considering the effect of the Hughes-Griswold acts in so far as they appeared to be contrary to charter provisions of a city, it was held:

"When the state, by legislative enactment, withdraws from cities the health powers previously granted to them and transfers them to newly created city health districts, such health districts become agencies of the state government, and their employees are governed by state law."

In the opinion the court at page 4 says:

"In dividing the state into health districts, the General Assembly, in the same act, also repealed the then existing statutes which authorized municipalities to establish and appoint boards of health as part of their local governments. This, in our opinion, evidences *a legislative intent to withdraw from municipalities the powers of local health administration previously granted to them,* and to create in each city a health district which is to be a separate political subdivision of the state, independent of the city with which it is coterminus, *and to delegate to it all health powers thus withdrawn from municipalities.* As such, the city health district becomes an agency of the state and is governed by the laws of the state." (Emphasis mine.)

To like effect, see State ex rel. v. Spitler, 47 Oh. App. 114.

Section 4413, above quoted, authorizes the board of health of a city to "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." It is further provided that regulations intended for the general public should be adopted, advertised, recorded and certified as are ordinances of a municipality, and the same should be given in the courts of the state the same force and effect as are given such ordinances.

It will be noted that there is no provision in this section, such as is provided by Section 3628 for municipal councils, whereby a board of health is authorized to make violation of its orders or regulations a misdemeanor, or to impose a penalty by way of fine or imprisonment for their violation. It is noteworthy that Section 1261-42, which was also included in the Hughes act, and relates to regulations to be adopted in similar manner by the board of health of a general health district, is also silent as to the power to make violations misdemeanors or to provide penalties by way of punishment. While Section 4414 was not expressly included in either the Hughes or Griswold acts and was left as it had theretofore existed as part of the health code, there is no evidence on the part of the Legislature of any intention either to repeal that section or to supplant it by any inconsistent enactment. On the contrary, there is the provision in Section 1261-30, above quoted, that all "powers, duties, procedure and *penalties* for violation" of sanitary regulations should be transferred to the newly created district boards. On the principle, therefore, sanc-

tioned by the rules of interpretation of statutes, that where there are several statutes relating to the same subject and having the same general purpose or forming a part of a general plan of legislation, all such statutes as are in *pari materia* are to be read together, although enacted at different times and although they contain no reference to one another. This principle is so stated in 59 Corpus Juris, p. 1043. In support thereof a very large number of cases are cited, including many Ohio cases, among which are: State v. Smith, 123 O. S. 237, State v. Smith, 116 O. S. 623; Board v. Wyman, 116 O. S. 441; and State v. Tracy, 113 O. S. 434.

The same volume of Corpus Juris, at page 918, contains the following statement:

> "A statute is not to be deemed repealed merely by the enactment of another statute on the same subject. The question is one of legislative intention. One of two affirmative statutes on the same subject matter does not repeal the other if both can stand. The court will, if possible, give effect to all statutes covering, in whole or in part, the same subject matter where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated.
>
> Where a later act covers the whole subject of earlier acts, embraces new provisions, and plainly shows that it was intended, not only as a substitute for the earlier acts, but to cover the whole subject then considered by the legislature, and to prescribe the only rules in respect thereto, it operates as a repeal of all former statutes relating to such subject matter. * * * In order to effect a repeal by implication on this ground it must appear that the subsequent statute covered the whole subject matter of the former one, and was intended as a substitute for it. If the later statute does not cover the entire field of the first and fails to embrace within its terms a material portion of the first, it will not repeal so much of the first as is not included within its scope."

Citing State v. Holenbacher, 101 O. S. 478.

McQuillen on Municipal Corporation, Vol. 2, p. 748, states the general principle that where the statute or charter provides the manner of enforcing an ordinance, that provision excludes any other method.

Since the Legislature itself has stated definitely the penalties which may be imposed upon one who violates the orders or regulations of a board of health intended for the general public, it would appear that, in the absence of express authority to impose other or different penalties of its own making, the board of health is without such authority and that the statutory procedure and the statutory punishment would be exclusive.

This principle was distinctly stated in an opinion of one of my predecessors found in Opinions Attorney General for 1929, p. 1010, where it was held:

> "An order of a district board of health made pursuant to the provisions of Section 1261-42, General Code, intended for the general public, may contain a reference to the statutory penalty for violation of such orders, which penalty is set forth in Section 4414, General Code. If reference to a penalty is made in such order, it should be so worded as to clearly indicate that the district board of health is not fixing the penalty."

In the opinion at page 1012 it was said:

> "The powers and duties conferred and imposed by law upon the board of health of a municipality and the procedure and penalties for violation of the sanitary regulations of a board of health which are in this section expressly transferred to the district board of health are those powers, duties, procedure, etc., as contained in Sections 4404 et seq. of the General Code. Section 4414, General Code, which you quote, is therefore clearly applicable to orders and regulations made by a district board of health and intended for the general public under the provisions of Section 1261-42, General Code.
>
> Regarding the question of including the penalty for violation of an order of the district board of health, intended for the general public, in such order, the district board has no authority to fix such penalty. However, if the district board of health desires to stipulate in such order the penalty which may be imposed for its violations, such stipulations should provide that whoever violates the order shall be fined as set forth in Section 4414, General Code, making particular reference to the statute so as to indicate that it is not the district board of health that is fixing the penalty."

Section 30 of the ordinance which you have submitted provides as follows:

> "Whoever violates the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined, for the first offense, not less than fifty dollars ($50.00) and not more than five hundred dollars ($500.00); for the second offense, not less than one hundred dollars ($100.00) and not more than five hundred dollars ($500.00); and for each subsequent offense, not less than two hundred fifty dollars ($250.00) and not more than five hundred dollars ($500.00)."

It is evident that the penalties prescribed by this ordinance are widely different from and much more severe than those authorized by Section 4414, above quoted. If the ordinance were in all other respects valid, I should accordingly be compelled to hold that this penal section, at least,

is in violation of law and invalid. That, however, would not necessarily affect the validity of the rest of the ordinance, because if the board of health had the power to pass the regulations contained in the ordinance, the penalty prescribed by the statute would follow without the ordinance containing any penalty section whatsoever. However, adopting the opinion of the Attorney General above referred to, the ordinance or regulation could properly make reference to the penalties provided by the statute.

Before passing to what I deem the most serious question as to the validity of this entire enactment, it may be remarked that the matters covered by the ordinance appear to be appropriate to the regulation of plumbing installation and the licensing of plumbers which have a direct and vital relation to the public health and are therefore legitimate subjects for regulation. I note that the ordinance contains no specific regulations as to the manner of installing or repairing plumbing, but refers to and adopts the provisions of the state building code, Sections 12600-137 and 12600-273 of the General Code, relating to sanitation.

In an opinion of one of my predecessors (1920 Opinions Attorney General, p. 354), it was held that this was a legitimate and proper mode of outlining the specifications for plumbing installation, viz., by reference to and adoption of the provisions contained in the sanitary section of the state building code.

I do not consider that it is necessary, nor am I able as a matter of law, to determine the reasonableness and validity of these very numerous and somewhat technical provisions as to the materials, processes and sanitary precautions embodied in the state plumbing code, and therefore, for the purpose of this opinion, must assume their validity.

I find, however, in Section 4420 a more serious question as to the validity of this ordinance, passed as it was by the sole action of the city board of health. It will be noticed that that section appears to make an exception to the general power conferred by Section 4413 on the board of health to adopt regulations designed to operate on the general public and intended for protection of the public health. Section 4420 deals specifically with the subject of "location, construction and repair of water-closets, privies, cesspools, sinks, plumbing and drains." The section provides that *except* in cities having a building department or otherwise exercising the powers to regulate the erection of buildings, the board of health may regulate the matters above mentioned, but it further provides that in cities having such department or exercising such power, the *council* by ordinance shall prescribe such rules and regulations *as are approved by the board of health,* and shall provide for their enforcement.

This would seem to leave the right of regulation of plumbing and similar sanitary matters to boards of health generally but to require such regulations, in a city having a building department or otherwise exercising the power to regulate the erection of buildings, to be by the concurrent action of the council and the board of health. Or, to state it a little more exactly, it requires that in all such cities the effective action and enforcement shall devolve upon the municipal officers by the enactment and enforcement of regulations which have had the approval of the board of health.

An examination of the history of Section 4420 shows that it was in existence precisely in its present form at the time of the passage of the Hughes-Griswold acts; that it formed a part of the same chapter with which those acts dealt in part, and formed a part of the general scheme of public health regulation, and that it was not expressly repealed and under the rules of interpretation to which I have already referred, it cannot be said that it was repealed by implication and there is nothing in it which is necessarily inconsistent with the new enactments. The general power to enact health regulations conferred upon the city board of health by Section 4413 may be read in connection with the explicit provision of Section 4420 without finding a necessary conflict, since the latter section would merely constitute an exception to the general power conferred by the former.

As a matter of fact, Section 4413, at the time of the passage of the Hughes-Griswold acts, differed but little from the form in which it now appears and not at all in the language conferring power upon the board of health to enact regulations intended for the general public. In its amended form it was merely made to apply to city districts alone, whereas previously it included other health districts.

Because of the provisions of Section 4420, relating explicitly to plumbing regulations, I am of the opinion that the ordinance in question, being an enactment only of the board of health, is invalid and that the proper and necessary procedure is for the city council to enact such an ordinance as the board of health shall approve, such enactment to be made according to the laws relative to the passage of municipal ordinances generally. In stating that conclusion, I am assuming that the city of Mansfield does have a building department or does regulate the erection of buildings in some manner. Such regulations are so general not only in cities but in most villages in Ohio that any other assumption would seem to be absurd.

There is one further consideration that ought to be noted and one further assumption to which I must call attention. There is nothing in your inquiry that suggests that the city of Mansfield might be operating under a special charter which contains provisions relative to the establish-

ment of a health administration other than or different from that provided by the Hughes-Griswold Acts.

Section 4404, General Code, as it stood at the time of the enactment of the Mansfield ordinance, read as follows:

> "The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act (General Code sections 1261-16 et seq., 4404, 4405, 4408, 4413) contained shall be construed as interfering with the authority of a municipality constituting a municipal health district, *making provision by charter for health administration other than* as in this section provided."

In the case of State ex rel. v. Underwood, 137 O. S. 1, to which I have already referred, the court had occasion to consider this section of the statutes and, at page 6 of its opinion after quoting the proviso relative to provision by charter, said:

> "It is our opinion that under the above-quoted provision, a municipality constituting a city health district is authorized to make reasonable provision, by charter, for supplementing the health administration work covered by the aforementioned section of the statute. To sustain the contention of appellant that the phrase 'other than' was used by the Legislature in the sense of 'different from' may lead to ludicrous situations, for it is conceivable that local health administration may be so 'different from' that provided by statute as to be contrary thereto. The Legislature could not possibly have intended to use the phrase in that sense."

The Legislature evidently did not agree entirely with the court's interpretation of its intended meaning, because at the next session it amended Section 4404 to read as follows:

> "Unless an administration of public health *different from* that specifically provided in this section has been established and maintained under authority of its charter prior to the effective date of this act, the council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office." (Emphasis mine.)

This amended section became effective September 4, 1941, and it will

be noted that its provisions are retroactive in that it refers specifically to the possibility of a charter provision having been made prior to the effective date of the act.

I do not feel called on at this time to discuss the extent of the difference that might be introduced into the set-up of health administration by a charter provision of a city and for the purpose of this opinion I am confining my consideration to the assumption that the city in question had not undertaken by charter provision to authorize a regime "other than" or "different from" that provided by the Legislature.

Coming now to the question as to the right of the city board of health to compel county commissioners to obtain permits for any plumbing to be done in the court house or jail, and to require that the county pay fees for such permits, I call attention to several statutes which, while not answering the question directly, yet have in my opinion a bearing as indicating the general legislative policy underlying the establishment of the district boards of health and their operation as agencies of the state.

Sections 2333 to 2342, inclusive, of the General Code, relate to the erection of the county buildings and provide that in the case of the erection of a court house or other county building, to cost in excess of $25,000, a building commission shall be appointed whose powers are defined in the sections above noted.

Section 2339 authorizes the commission to employ architects, superintendents, and other necessary employes, and Section 2340 provides for the preparation of plans and specifications to be approved by the building commission. Section 2348 provides in part as follows:

> "If the plans * * * relate to the building of a court house or jail, or an addition to or alteration, repair or improvement thereof, they shall be submitted to the commissioners, together with the clerk of the court, the sheriff and probate judge, and one person to be appointed by the judge of the court of common pleas, for their approval. If approved by a majority of them, a copy thereof shall be deposited with the county auditor, and kept in his office."

I do not find any other provisions relative to the approval of these plans as to their technical features.

Sections 1261-2, et seq., relate to the appointment of state plumbing inspectors in the department of health of the state and define the duties of such inspectors. A portion of Section 1261-2 reads as follows:

> "Plans and specifications for all sanitary equipment or drainage to be installed in or for buildings coming within the provisions of this act shall be submitted to and approved by the department of health before the contract for installation of the sanitary equipment or drainage shall be let."

By the terms of Section 1261-3, the public buildings which are listed as coming within the jurisdiction of the state plumbing inspectors, are listed as including "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."

It will be observed that the above enumeration, while it includes prisons, does not include court houses unless we adopt a rather too broad interpretation. However, it is not necessary to determine that question. My purpose in calling attention to that portion of the section is to direct attention to a later paragraph contained therein, which reads as follows:

> "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."

By this the legislative intent is very clear to commit to municipalities or other political subdivisions, wherein plumbing regulations have been enacted, the matter of supervision of plumbing even in public institutions such as are within the express purview of the act. Reference might also be made to the state building code found in Section 12600-1, et seq. This code is made to apply to certain public buildings therein named, but by the terms of the statute, particularly Section 12600-1, the classes of buildings that are to be affected are limited to (1) theaters and assembly halls and (2) school houses. Included in this code are Sections 12600-137 to 12600-273, inclusive, relating specifically to plumbing and sanitation, and establishing precise regulations for the installation of plumbing in the buildings coming within the purview of the code. It is these regulations that have been adopted by reference in the ordinance submitted. There appears to be nothing in this state building code which would include court houses and jails, and therefore it does not have the effect of taking those county buildings out of the control of those authorities to whom the state has committed the power of regulation as to sanitation.

Finding nothing in the statutes that seems to be intended to grant immunity to counties as to compliance with lawfully adopted health regulations relating to health and sanitation, and recognizing that unsanitary

conditions in a court house or jail are just as offensive and as dangerous to the public health as if they existed in a privately owned building, there seems to be no reason to conclude that county commissioners are in any way absolved from the obligation to procure permits for installation or repair of plumbing in the buildings in question.

One of my predecessors had under consideration the question of the jurisdiction of district boards of health over buildings owned by the state in matters affecting health and sanitation, and he held in an opinion found in Opinions Attorney General for 1933, p. 1214:

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

This opinion rested upon the general proposition that the state is not bound by the terms of a general statute unless it be expressly so declared. The Attorney General quoted from State ex rel. v. Board of Public Works, 36 O. S. p. 409, where the court stated that although the statute there involved was broad enough to embrace the state, yet the state was not included in the general words of the statute nor its purview except when expressly so declared. The court stated at page 414:

> "The doctrine seems to be, that a sovereign state, which can make or unmake laws, in prescribing general laws intends thereby to regulate the conduct of subjects only, and not its own conduct."

The Attorney General, however, called attention to Section 1261-26, General Code, which is a part of the Hughes-Griswold acts, where the duties of a district health board are defined, including the following:

> "The district board of health may also provide * * * for the inspection of schools, public institutions, jails, workhouses, children's homes, and other charitable, benevolent, correctional institutions."

The Attorney General added to this quotation the comment:

> "It must be noticed, that the enumerated institutions are *county* institutions and do not refer to state institutions."

Likewise, in Section 1261-31, it is made the duty of the district health commissioner to "make frequent inspections of all county infirmaries, children's homes, workhouses, jails and other charitable, benevolent or penal institutions in the district." There is thus indicated in the legis-

lation above referred to an evident intention on the part of the legislature that public buildings, as well as private, shall be subject to regulations duly adopted by the authorities who constitute a part of the general scheme of the state for the protection of the public health.

I am therefore of the opinion that a city board of health may compel the county board of commissioners to obtain permits for plumbing installation or repair in the court house or jail, in compliance with a lawfully enacted ordinance regulating plumbing in the city where such court house or jail is located.

As to the last question which you have raised, viz., the right of the board of health to require the person employed as janitor by the county commissioners to obtain a plumber's license and also as to the right of the county commissioners to pay the license fee for the issuance of such plumber's license, I have no hesitancy in giving a negative answer to both of the propositions involved in that question. The board of health certainly has no power to fix the qualifications of a janitor in the court house or jail by requiring that he be a plumber and obtain a plumber's license, nor are the county commissioners required to employ a janitor who has a plumber's license. As I have already indicated, the county is not immune from compliance with the regulations of the health authorities in the matter of plumbing and sanitation in the court house and jail. It would therefore follow that if the health ordinance requires all plumbing to be done by a licensed plumber, the county would have to employ a licensed plumber to do their work, but it does not follow that he should be a janitor also. If the janitor is also a licensed plumber, they may of course permit him to do the work.

The steps necessary to qualify him as a licensed plumber are plainly matters of his own concern, and the cost of obtaining his personal license to do plumbing would also fall upon him. It seems to need no argument to show that the county commissioners, being purely creatures of the law, and having only such powers as the statutes give them, and having no statutory authority in the premises, could not spend public money for the purpose of qualifying their janitor or any other employe to become a licensed plumber.

Respectfully,

THOMAS J. HERBERT,
Attorney General.