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HEALTH — DISTRICT BOARDS OF HEALTH OF GENERAL HEALTH DISTRICTS — INSPECTION TRAILER CAMPS — MAY IMPOSE REASONABLE STANDARDS BY ORDER OR REGULATION — HEALTH MEASURE TO PREVENT OR RESTRICT DISEASE — COSTS OF INSPECTION AND PERMIT CHARGEABLE TO OPERATION OF CAMPS.

SYLLABUS:

District boards of health of general health districts may by order or regulation in the interest of public health or for the prevention or restriction of disease, provide for the inspection of trailer camps and impose reasonable standards in connection therewith. The costs of such inspection and the issuance of a permit certifying that there has been compliance with the standards may be charged to the operators of said camps.

Columbus, Ohio, November 4, 1941.

Hon. Thomas J. O'Connor, Prosecuting Attorney,
Toledo, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which

reads as follow:

> "For some time we have been making an examination of the statute law pertaining to the supervision of trailer camps by the district board of health, and we find no provision for charging a fee for the inspection and issuance of a permit.
>
> I ask, therefore, that you consider this question and give me your ruling at your earliest possible convenience."

General health districts created by Section 1261-16, General Code, and comprised of the townships and villages in each county are governed in their affairs by district boards authorized by law to promulgate orders and regulations. Such authorization is contained 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. All orders and regulations not for the government of the board, but intended for the general public, shall be adopted, recorded and certified as are ordinances of municipalities and record thereof shall be given in all courts of the state the same force and effect as is given such ordinances, but the advertisements of such orders and regulations shall be by publication in one newspaper published and of general circulation within the general health district. Publication shall be made once a week for two consecutive weeks and such orders and regulations shall take effect and be in force ten days from date of first publication. Provided, however, that in cases of emergency caused by epidemics 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."

An examination of the court decisions with respect to the foregoing grant of authority presents a difference of opinion concerning the scope and extent of the boards' powers. If the statute in question is to be considered as an independent delegation of authority unrestricted by other sections of the act, then it must be concluded that the board is empowered to make rules and regulations unlimited so long as they pertain to the public health and the prevention of disease and do not contravene constitutional guarantees. If, however, the rule making power of the board is construed as being incident to and limited by the powers expressly granted and only as a medium through which the board may effectuate

the duties imposed upon it by law, it becomes necessary to examine the statutes in detail for the purpose of determining whether a regulation may be enacted with respect to trailer camps, and if so, the extent to which such a regulation may go.

In the case of Carr v. Board of Education of Columbus, 1 O.N.P. (N.S.) 602, the court in referring to Section 2118, Revised Statutes, which contains language identical to Section 1261-42, supra, stated at page 609:

> " * * * It is true that the language of Section 2118, Revised Statutes, is broad enough, considered alone, to confer power upon the board of health to make rules and regulations *ad libitum,* for the protection of the public health and the prevention and restriction of disease. It is doubtless true that a grant of power which, in one section of the act is general, may be limited by restrictions contained in other sections of the same act, and that a survey of the whole act may reveal that it was the legislative intent to confine the power within particular limitations imposed by other grants contained in other sections of the act. The effect of particular provisions respecting the exercise of powers by a board on a general provision as to power overlapping them, is a question of legislative intention. We have in this act a general grant of power. Then, by a subsequent section the Legislature has provided certain duties of the boards of health with reference to schools, school buildings and property. Did the Legislature thereby intend to limit the powers of health boards to the particular duties therein provided in so far as their power over pupils in the public schools is concerned?"

In answering the foregoing question the court cited with approval the case of Potts v. Breen, et al., 167 Ill. 67, which held that the health law of that state, which provides that the board of health shall have supervisory power over the "interests of the health and lives" of citizens, is to be construed in relation to the specific grants of power contained in the act as a whole and limited by those specific provisions.

Contrary to the foregoing are the decisions which hold that the authority contained in Section 1261-42, supra, is a general grant of power unlimited except for the fact that its exercise must be reasonable. See Klopher v. Board of Health, 9 O.N.P. (N.S.) 33; Shute v. City of Elyria, 20 O.C.C. (N.S.) 383; Lenhart v. Hanna, 14 O.App. 182; Staas v. State, 15 O.C.C. (N.S.) 189.

In the case of Lenhart v. Hanna, 14 O.App. 182, which held that a

municipal board of health will be enjoined from enforcing an unreasonable regulation, the court, in referring to the jurisdiction of the board to regulate the business of barber shops, declared at page 188:

> "That it has the power to regulate such business by the making and enforcing of orders consistent with reasonable rules governing health is not disputed."

In Opinion No. 2359, Opinions of the Attorney General for the year 1928, Vol. III, at page 1748, the then Attorney General in referring to Section 1261-42, supra, stated:

> "You will note that the sections of the General Code above referred to confer almost unrestricted powers, save only such limitations as are imposed by the constitution, upon a district board of health. Generally speaking courts will not interfere with any reasonable regulation enacted by such boards so long as such regulations are justified by public necessity and do not violate any constitutional provision."

To the same effect is Opinion No. 3894, appearing in Opinions of the Attorney General for the year 1936, Vol. I, at page 103.

In view of the fact that health laws are liberally construed and that the protection of the public health is one of the first duties of government, I am constrained to follow the interpretation of my predecessors concerning the scope of the district board's authority as set forth in Section 1261-42, supra.

It follows, therefore, that district boards, under their rule making power, may, in the interests of public health or for the prevention or restriction of disease, require trailer camps to comply with reasonable orders or regulations.

While the statutes do not expressly authorize the board to charge a fee for the costs of inspection and the issuance of a permit certifying that there has been a compliance with the orders or regulations this authority is implied. In the case of Prudential Cooperative Realty Company v. City of Youngstown, 118 O.S. 204, at page 214, the court, in referring to an inspection ordinance, stated:

> "It is not necessary that the statute should specifically

give to the municipality power to charge and collect a fee to cover the cost of inspection and regulation. Where the authority is lodged in the municipality to inspect and regulate the further authority to charge a reasonable fee to cover the cost of inspection and regulation will be implied. The fee charged must not, however, be grossly out of proportion to the cost of inspection and regulation; otherwise it will operate as an excise tax, which is clearly beyond the power of a municipality to impose."

And in the case of Cincinnati v. Allison, 12 O.Dec. (N.P.) 376, it was held as evidenced by the second and third headnotes that:

"2. RULE APPLIED — WEEKLY INSPECTION. A regulation by the board of health of a city requiring all known prostitutes of such city to submit to a personal examination once every week by a district physician, to determine whether they are affected with any venereal disease and if found free therefrom, to receive a certificate to that effect, which certificates can only be obtained from the health office, and are required to be conspicuously displayed in the rooms of such persons, is not unreasonable as a compromise with crime or in restraint of personal liberty or invalid for any other reasons.

3. EXPENSE CHARGEABLE TO PERSONS EXAMINED. The expense of a regulation by the board of health of a city requiring all known prostitutes to submit to weekly examination by district physicians is properly chargeable against the persons thus examined, who are responsible for the unsanitary conditions making such measures necessary."

Applying the same reasoning in the instant case, upon finding that authority is lodged in the district board of health to inspect and regulate, it must be concluded that there is the further authority to charge a reasonable fee to cover the cost of such inspection.

In specific answer to your inquiry, therefore, it is my opinion that district boards of health of general health districts may by order or regulation in the interest of public health or for the prevention or restriction of disease, provide for the inspection of trailer camps and impose reasonable standards in connection therewith. The costs of such inspection and the issuance of a permit certifying that there has been compliance with the standards may be charged to the operators of said camps.

Respectfully,

THOMAS J. HERBERT,

Attorney General.