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HEALTH, COUNTY BOARD OF—RULES—NO DOG LICENSE SHALL BE ISSUED UNLESS CERTIFICATE FROM LICENSED VETERINARIAN STATES DOG HAS BEEN INOCULATED AGAINST RABIES—PRESENTED TO COUNTY AUDITOR—RULE INVALID.

SYLLABUS:

A rule of a county board of health, which rule provides that no dog license shall be issued unless there has first been presented to the county auditor a certificate from a licensed veterinarian to the effect that the dog sought to be licensed has been inoculated against rabies, is invalid.

Columbus, Ohio, June 21, 1948

Hon. William A. Ambrose, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

I have before me your request for my opinion, which request is as follows:

"The Mahoning County Board of Health has requested me to obtain your opinion on the following:

"1. Can such Board legally pass a resolution binding on the County Auditor, that before any dog license shall be issued there shall first be presented to the Auditor a certificate from a licensed veterinarian to the effect that such dog has been inoculated for rabies?

"2. Has such Board the legal authority to furnish, free of cost, rabies serum to veterinarians for such inoculation?"

Directing attention to your first question, the powers of a general board of health to make orders and regulations are set out in Section 1261-42, General Code, which provides in part 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.
* * *"

The duties of the county auditor as to the issuance of dog licenses are set out in Section 5652-3, General Code, which provides in part as follows:

"Upon the filing of such application for registration and the payment of such registration fee, the county auditor shall assign

a distinctive number to every dog or dog-kennel described in such application, and deliver a certificate of registration bearing such number to the owner thereof. * * *

It appears from this statute that upon the filing of the application and the payment of the fee the auditor performs a ministerial function in assigning a number and issuing a certificate, and that the performance of this function could be compelled by mandamus if the auditor refused to act. Your request presents the question of whether the board of health can create another condition and direct the auditor not to issue a certificate until that condition has been satisfied.

Stated in another manner as a general question of law, the question raised by your communication is: Can the General Assembly delegate to an administrative body the power to alter the duties of a public official whose office is created and whose statutory duties are prescribed by the General Assembly? As in any case involving a delegation of power, a second general question is raised: Has the General Assembly attempted to delegate the power in question by the statute under consideration?

It is my opinion that this second general question must be answered in the negative. Assuming that the General Assembly, by the use of proper language, could provide that the board of health should have power to require the county auditor to cease issuing licenses to dogs not inoculated against rabies, I find no intention so to provide in Section 1261-42, General Code, set out above. The orders referred to by the statute are of two kinds, those "for the government of the board" and those "intended for the general public," and the statute makes provision for publication of the latter type. This language is consistent with a delegation of power to pass reasonable rules and regulations governing the conduct of the general public as to health matters, and no more. No reference is made to orders which affect other administrative bodies and public officials, and I do not feel justified in reading such a reference into the general language employed by the legislature. If the power in question can be delegated at all, it seems to me that it can be delegated only by clear and express language, and such language was not employed in Section 1261-42, General Code.

Some confusion as to the present problem is created by the provision that "* * * orders * * * 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, * * *." This language, which has remained unchanged since the passage of the act providing for general health districts in 108 O. L. Pt. I, 236 (246) §27, was lifted bodily from Section 4413, General Code, dealing with the powers of municipal boards of health. The same provision, in various wordings, has been embodied in the laws governing municipal boards of health since the passage of an act set out in 66 O. L. 149, providing for the organization and government of municipal corporations. Section 309 of that act (66 O. L. 201) provided as follows:

"The council may grant power to such board to make and pass all such orders and regulations as they shall, from time to time, deem necessary and proper for the public health and for the prevention of diseases; and such orders and regulations, when adopted, shall have all the force and effect of ordinances of such corporation."

Such language has considerable significance when applied to a municipal board of health. The General Assembly has conferred on municipalities the power to govern themselves as to certain matters, and has provided for the passage of ordinances by council. It has also provided that in certain cases orders of a board of health shall have the same force and effect as ordinances. Such orders affect the general public and municipal officers whose duties are prescribed by ordinance.

But when this language, intended to apply to municipal affairs, is transferred to a statute governing general boards of health of county-wide jurisdiction, it loses its legal significance. Except for counties existing under the charter form of government, which form has not been adopted by your county, there are no ordinances of county-wide effectiveness. And the duties of county officials are prescribed by the general assembly on a state-wide basis with no provision for local authorities which can vary those duties. Consequently, the reference to ordinances is meaningless except as a means of specifying the publicity to be given to rules of a general board of health.

In answer to your first question it is therefore my opinion that a rule of a county board of health, which rule provides that no dog license shall be issued unless there has first been presented to the county auditor a certificate from a licensed veterinarian to the effect that the dog sought to be licensed has been inoculated against rabies, is invalid.

Your second request raises the question of the power of the county board of health to furnish rabies serum, free of cost, to veterinarians for the purpose of making such inoculations. This question arises only if the board is held to have power to require a certificate of inoculation as a prerequisite to the auditor's issuance of a dog license, and since I have held that such power does not exist, I do not deem it necessary to answer your second question.

Respectfully,

HUGH S. JENKINS,
Attorney General.