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1. PULMONARY TUBERCULOSIS—PERSON FOUND SUFFERING FROM—DUTY TO REMOVE TO TUBERCULOSIS HOSPITAL—RESTS UPON BOARD OF HEALTH OF HEALTH DISTRICT WHERE SUCH PERSON IS FOUND—SECTION 339.40, RC.
2. SHERIFF—NO DUTY TO CONVEY PERSON SUFFERING FROM PULMONARY TUBERCULOSIS TO TUBERCULOSIS HOSPITAL—BOARD OF HEALTH HAS NO AUTHORITY TO IMPOSE SUCH DUTY UPON SHERIFF.

SYLLABUS:

1. The duty as prescribed by Section 339.40 Revised Code, of removing to a tuberculosis hospital a person found suffering from pulmonary tuberculosis rests upon the board of health of the health district in which such person is found.

2. No duty rests under the law upon the sheriff to carry out the order of a district board of health to convey to a tuberculosis hospital a person suffering from pulmonary tuberculosis who is in the opinion of the board a menace to the public health, and the board of health is without authority to impose such duty upon the sheriff.

Columbus, Ohio, July 30, 1956

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton 2, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“Under Section 339.40, the Board of Health of a general health district, upon the recommendation of the health commissioner, may order removed to a county district tuberculosis hospital any person suffering from pulmonary tuberculosis, when in the opinion of the board such person is a menace to the public health and cannot receive suitable care and treatment at home.

“Is the county sheriff the person charged with the duty of carrying out the order of the health board, and if so, may he use such force as is necessary to remove persons affected by such orders to the tuberculosis hospital?”

“If the sheriff does not have such authority, what procedure should be followed to enforce the orders of the board?”

Your question involves a consideration of the duties imposed by law upon a sheriff and the right of a district board of health to command his services.

At the outset, it is, I believe, a fundamental principle of law that the duties of a public officer are prescribed either by the constitution or the statute. The constitution makes no provision regarding the duties of a sheriff. Accordingly, we look to the statutes.

An examination of the statutes relative to the duties of sheriff leads us first to Section 311.07 Revised Code, which prescribes his general duties. Without quoting that statute we observe that it makes it his duty: (1) to preserve the public peace; (2) to attend upon the court of common pleas and the court of appeals, and (3) under the direction and control of the board of county commissioners to have charge of the court house.

By Section 311.08 Revised Code, it is made his duty to execute every summons, order, or other process and to “exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law.” I understand “process” to refer to a writ issued by a lawfully authorized judicial tribunal.

I do not consider it necessary, in order to determine what are the duties of the sheriff under the “common law,” to undertake an exploration of that vast system. I deem it sufficient to quote from the opinion in *State, ex rel. Attorney General v. Ganson*, 58 Ohio St., 313, where the court at page 320 says:

“It is the duty of the sheriff, says Lord Coke: ‘To preserve the peace in his bailiwick or county. To this end he is the first man within the county, and it is incident to his office that he apprehend and commit to prison all persons who break or attempt to break the peace. He is bound, ex-officio, to pursue and take all traitors, murderers, felons and rioters. He has the safe-keeping of the county jail, and must defend it against all rioters; and for this, as well as for any other purpose, in the execution of his duties, he may command the inhabitants of the county to assist him, which is called the posse comitatus.’”

In 36 Ohio Jurisprudence, page 642, the author calls attention to a number of provisions of the statutes where special duties are imposed

upon the sheriff, including matters relating to keeping order at elections, Section 3501.33 Revised Code; executing orders of the secretary of agriculture relative to diseased animals, Section 941.02 Revised Code; and execution of certain orders of the governor relative to pardons and reprieves, Section 107.04, Revised Code, etc. Many other specially prescribed duties of the sheriff may be found throughout the Code.

I do not find any provision of law whereby any duty is imposed upon the sheriff to execute orders of a board of health, nor do I find upon examination of the statutes relative to the powers of a district board of health any provision authorizing such board to impose any duties upon the sheriff or require any service from him.

The board of health is authorized by Section 3709.21 Revised Code, to make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. Section 3707.48 Revised Code, makes it unlawful for any person to violate any order or regulation of such board of health or willfully or illegally omit to obey the same. Section 3707.99 Revised Code imposes a penalty for such violation, and a fine of not more than one hundred dollars and imprisonment for ninety days, or both.

Coming, then, to the particular statute to which you refer, Section 339.40, we find its provisions reading as follows:

“The board of health of a city or of a general health district, upon a proper presentation of the facts, and upon the recommendation of the health commissioner of a city or of a general health district, may order removed to a municipal, county or district tuberculosis hospital any person suffering from pulmonary tuberculosis, when, in the opinion of the board such person is a menace to the public health and cannot receive suitable care and treatment at home. Such person may leave the state. If such person leaves the state the health commissioner shall immediately notify the health authorities of the state to which the person has gone. The expense of removal of such person to a tuberculosis hospital, and for his care, treatment, and maintenance therein shall be paid by such person or by those persons legally responsible for the cost of his care, treatment, and maintenance. Such expense shall be paid by the county in which he has legal residence, if he is unable to provide therefor.”

Here, it will be noted that the power of the board of health is to order removed to a tuberculosis hospital any person found suffering from pul-

monary tuberculosis when in the opinion of the board such person is a menace to the public health and cannot receive suitable care and treatment at home. The statute further provides that the expense of removal of such person to a tuberculosis hospital shall be paid by such person or by those persons legally responsible for the cost of his care, treatment, and maintenance. But if he is unable to provide therefor, such expense is to be paid for by the county of his legal residence.

This duty of removal is plainly placed upon the board of health. That board is entitled by Section 3709.13 Revised Code, to appoint such employees "as are necessary for the proper conduct of its work," and by Section 3707.09 Revised Code, to employ as quarantine guards as many persons as are necessary to execute its orders and properly guard any house or place containing any person afflicted with or exposed to a communicable disease. It appears quite clearly that the board should be able to provide the man power requisite to the conduct of the patient to the hospital.

Plainly, the conveyance of a person such as described in your letter, to a hospital, would not ordinarily require resort to the criminal process of the law. If, by reason of resistance on the part of such person, the board finds it necessary to resort either to criminal or civil procedure in the courts, it is plain that a writ might be issued to the sheriff which he would be bound to execute, but in such case he would be getting his orders from the court and not from the board.

Accordingly, in answer to your question, it is my opinion:

1. The duty as prescribed by Section 339.40 Revised Code, of removing to a tuberculosis hospital a person found suffering from pulmonary tuberculosis rests upon the board of health of the health district in which such person is found.

2. No duty rests under the law upon the sheriff to carry out the order of a district board of health to convey to a tuberculosis hospital a person suffering from pulmonary tuberculosis who is in the opinion of the board a menace to the public health, and the board of health is without authority to impose such duty upon the sheriff.

Respectfully,

C. WILLIAM O'NEILL

Attorney General