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STANDARDS FOR INSTALLATION OF WATER SUPPLIES BY COUNTY BOARD OF HEALTH MUST BE PROMULGATED AND PUBLISHED IN ACCORDANCE WITH §3709.21, R. C.

## SYLLABUS:

In the adoption of standards for the installation of water supplies by a county board of health, such standards must be promulgated and published in accordance with the provisions of Section 3709.21, Revised Code, in order for them to become effective.

Columbus, Ohio, September 15, 1959

Hon. H. Dennis Dannley, Prosecuting Attorney  
Medina County, Medina, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have received a request to obtain from you your opinion concerning the passage of Orders and Regulations by the Board of Health under Section 3709.21.

“The Board of Health of Medina County desires to amend Regulation No. 2 of their Sanitary Regulations providing for the installation of water supplies. They also at the same time desire to adopt standards in connection with this regulation.

“The Board realizes that they must adopt and publish the regulation in the manner provided for in Section 3709.21 of the Revised Code and their question is whether or not the statute requires them to take the same steps in the adopting of the standards and whether or not they are required to publish the stand-

ards in accordance with this section in order to make them effective.

“For your purpose I am enclosing a copy of the revised Sanitary Regulations, together with a copy of the proposed amendment showing the new Regulation and the Standards which they desire to make effective.”

Section 3709.21, Revised Code, provides in part as follows :

“\* \* \* *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 municipal corporations and the record thereof shall be given in all courts the same 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 district. \* \* \*”

There appears to be little if any distinction between an order or regulation and so-called standards. It is true that every order or regulation does not necessarily establish a standard of reasonable conduct but, at the same time, it is difficult to see how a valid set of standards can be established otherwise than by the promulgation and publication of an order or regulation. Thus, for example, while there may be a tenuous distinction between an order or regulation requiring a license or permit to engage in well digging and a standard establishing what constitutes an acceptable location of a well ; however, in so far as Section 3709.21, Revised Code, is concerned, there is no distinction whatsoever. In other words, though some regulations establish a code of conduct, the mere device of calling them standards rather than rules or regulations does not render inapplicable thereto the provisions of Section 3709.21, Revised Code.

The above conclusion is based upon an interpretation of Section 1261-42, General Code, by the Supreme Court of Ohio in the case of *State of Ohio*, Appellant, v. *Waller*, Appellee, 143 Ohio St., 409, wherein the syllabus states :

“A publication of a regulation of a district board of health, which omits the rules of conduct to be observed and merely refers those who may be affected to a copy of the terms ‘on file in the office of the board of health,’ is not a compliance with Section 1261-42, General Code, and until proper publication has been made such regulation is not effective and no prosecution may be had thereunder.”

The pertinent portions of Section 3709.21, Revised Code, and former Section 1261-42, General Code, are identical. Therefore, it is my opinion

and you are advised that in the adoption of standards for the installation of water supplies by a county board of health, such standards must be promulgated and published in accordance with the provisions of Section 3709.21, Revised Code, in order for them to become effective.

Respectfully,

MARK McELROY

Attorney General