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1. HEALTH, BOARDS OF—MANDATORY DUTY TO PROVIDE FOR PROMPT DIAGNOSIS AND CONTROL OF COMMUNICABLE DISEASES—GENERAL HEALTH DISTRICT—CHARGED WITH CARE AND SUPERVISION OF TUBERCULOSIS PATIENTS—SECTION 1261-26 G. C.
2. COUNTY COMMISSIONERS—STATUS IN COUNTY WHERE NO COUNTY TUBERCULOSIS HOSPITAL OPERATED—PUBLIC HEALTH NURSES EMPLOYED.

SYLLABUS:

1. Section 1261-26, General Code, places upon boards of health the mandatory duty to provide for the prompt diagnosis and control of communicable diseases. Under that authority the board of health of a general health district is charged with the care and supervision of tuberculous patients.

2. Where the board of county commissioners of a county which does not operate a county tuberculosis hospital and which is not part of a district in which tuberculosis clinics are maintained, has assumed the care and supervision of tuberculous patients by employment of public health nurses, no formal agreement is necessary to relinquish such care and supervision to the board of health of the general health district of such county, nor is it necessary to first obtain the consent of such board of health.

Columbus, Ohio, May 31, 1946

Hon. C. J. Borkowski, Prosecuting Attorney
Steubenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Be advised that the County of Jefferson does not have a County Tuberculosis Hospital, nor are they affiliated with any district hospital as provided by law. Neither has the county established a County Welfare Department.

The County Commissioners, however, are anxious and desirous that the County Tuberculosis Department under their supervision and control be transferred to the County Health Department, and they are advised that the County Health Department is willing to assume the duties of the County Tuberculosis Department.

Can the County Commissioners place the care and supervision of the county tubercular patients under the control of the County Health Department without the consent of the County Health Department to effect such a procedure? On the other hand, if the consent of the County Health Department will be necessary in the matter, would the provisions of Section 2450-2 apply in entering into any arrangements or agreement for the purpose of effecting such transfer? As the Commissioners of this County and the County Health Department wish to effect this transfer as soon as possible, if so allowed, an early opinion in this matter is hereby requested."

Your inquiry concerns the powers and duties of a general health district and of the county commissioners, respectively, concerning tuberculous patients.

The powers of boards of health are statutory; they have no common-law powers. The statutes to which they owe their existence are the source and limits of their powers, which are expressly conferred or fairly implied from those expressly granted. See 20 O. Jur. 557, citing *Marion Township Board of Health v. Columbus*, 12 O. D. N. P. 553.

Health districts are created by the provisions of section 1261-16, General Code, which reads as follows:

"For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district."

The first sentence of section 1261-26, General Code, reads:

"In addition to the duties now required of boards of health, it shall be the duty of such district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases."

It will thus be seen that the power actually and expressly conferred is quite broad. *Turner v. Toledo*, 15 O. C. C. 627, 8 O. C. D. 196. Fur-

thermore, the power granted boards of health under statutes not necessary to quote here is practically coextensive with the necessities that may arise for the purpose indicated. See *Metropolis v. Elyria*, 23 O. C. C. (N. S.) 544, 44 O. C. C. 374. For example, under section 3139-20, General Code, boards of health have authority to order hospitalization of persons suffering from pulmonary tuberculosis. That section reads:

“The board of health, upon a proper presentation of the facts, and upon the recommendation of the health commissioner of a city or general health district, shall have authority to order removed to a municipal, county or district hospital for tuberculosis, any person suffering from pulmonary tuberculosis, when in its opinion such person is a menace to the public health, and cannot receive suitable care and treatment at home; provided, however that such person shall have the right to remove from the state. If such person shall remove from the state it shall be the duty of the health commissioner to notify immediately the health authorities of the state to which removal was made. 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 legally responsible for the cost of his care, treatment and maintenance. The expense of removal, care, treatment and maintenance shall be paid by the county in which he has legal residence, if such person is unable to provide therefor.”

The mandatory language of section 1261-26, General Code, stating “it shall be the duty of each district board of health to * * * provide for the prompt diagnosis and control of communicable diseases”, has no counterpart in those statutes concerning the powers and duties of the county commissioners. It may be laid down, as a general rule, that the board of county commissioners is clothed with authority to do whatever the corporate or political entity, the county, might do, if capable of rational action, except in respect to matters the cognizance of which is exclusively vested in some other officer or person. As counties possess only such powers and privileges as may be delegated to them by the Legislature, it follows as a necessary consequence that the powers of county commissioners are statutory, both as to source and intent. See 11 O. Jur. 331 and 332; *State, ex rel. Stanton, v. Andrews*, 105 O. S. 489, and *State, ex rel. Bushnell v. Cuyahoga County*, 107 O. S. 475. As stated above, there appears in the statutes of this state no express duty upon the county commissioners to care for and supervise tuberculous patients. There is, of course, discretionary authority, as pointed out in

Opinion No. 5308, Opinions of the Attorney General for 1942, page 480, under the provisions of section 3139-19, General Code, for the employment of public health nurses for the prevention, cure and treatment of tuberculosis in those counties which do not operate county tuberculosis hospitals or which are not part of a district in which tuberculosis clinics are maintained.

Section 3139-19, General Code, reads as follows:

“In such counties as do not operate a county hospital for tuberculosis, or in such counties as have joined in the construction of a district tuberculosis hospital and in which district the joint board of county commissioners shall fail or refuse to maintain tuberculosis clinics as provided in section 17 of this act, the county commissioners of any such county may establish and maintain one or more tuberculosis clinics in the county and may employ physicians, public health nurses and other persons for the operation of such clinics or other means provided for the prevention, cure and treatment of tuberculosis and may provide by tax levies, or otherwise, the necessary funds for their establishment, maintenance, and operation. Clinics so established shall be under the control of the board of county commissioners and shall be supervised by a board of three trustees similar in all respects to and with all the powers enjoyed by a board of trustees of a county tuberculosis hospital; or by a city or general district board of health within the county as the board of county commissioners may designate.”

Therefore, as opposed to the mandatory duty upon district boards of health to care for and supervise tuberculous patients, I find the permissive language under which the county commissioners of Jefferson County have apparently operated in the employment of a nurse. There would be no basis for holding that the county commissioners, having thus exercised their discretion under section 3139-19, General Code, in the employment of a public nurse, thereby acquired such exclusive jurisdiction of such patients that their care and supervision may not be turned over to the general health district which is charged with the mandatory duty.

Therefore, in answer to your first question, it is my opinion that since it is the mandatory duty of the general health district of Jefferson County to provide for the care and supervision of county tuberculous patients under the provisions of section 1261-26, General Code, no formal

transfer of those patients who have been under the care and supervision of a nurse employed by the board of county commissioners under authority of section 3139-19, General Code, is required, and it is not necessary to obtain the consent of the district board of health to such transfer.

In view of the answer to your first question, it is not necessary to discuss your second question. However, it might be pointed out that the provisions of section 2450-2, General Code, relate only to agreements with the legislative authority of any city, village, school district, library district, health district or other taxing district, or with the board of county commissioners of any other county, whereby such board undertakes to exercise any power or powers, to perform any function or functions, or render any service or services in behalf of the contracting subdivision. It has no bearing on questions of the relinquishment of functions assumed under discretionary authority, which is the question involved here.

Respectfully,

HUGH S. JENKINS
Attorney General