board of education to faithfully perform the duties of its office, or on account of the negligence or carelessness of the board or its agents or servants.

In the case of *Conrad, a minor,* vs. *Board of Education of Ridgeville Township,* decided by the Court of Appeals for Lorain County, and reported in the December 3, 1928, issue of the Ohio Law Bulletin and Reporter, it is held, as stated in the headnote:

> "In the absence of a statute specifically creating a civil liability, a board of education is not liable in damages to a pupil who is taking a manual training course in its mechanical department, and who suffers injury as a result of the board's failure properly to protect, as required by law, the machinery used by said pupil."

In that case the board had failed to provide a guard for the saw. It was admitted that there was no liability at common law, but it was contended that, by reason of the fact that under Sections 1027, 1028 and 12600-72, General Code, boards of education are required to provide guards for such machines as buzz saws, if they failed to do so they could be held liable in damages for injuries received on account thereof. In the course of the opinion the court said:

> "In the instant case it is beyond question that the board of education was required by the sections hereinbefore quoted, to guard the saw which injured the plaintiff, and its failure to do so made the members thereof guilty of a misdemeanor, for which they could be punished in an action at law; but these sections do not impose a civil liability upon said board for failure to do so, * * * See *Finch* vs. *Board of Education,* 30 Ohio St. 37. * * * *Board of Education* vs. *Volk,* 72 Ohio St., 469."

A board of education, in carrying out the functions of its office, is said to be acting in a governmental capacity rather than a proprietary capacity and is not responsible in damages for misfeasance, malfeasance or nonfeasance in office. For that reason, there can be no question but that the board of education of Orrville can not be held responsible in damages for the accident about which you inquire, and a suit against the board for the doctor bill would result in a judgment for the board.

Respectfully,
GILBERT BETTMAN,
Attorney General.

262.

DISTRICT BOARD OF HEALTH—ORDERS INVALID IF NOT ADOPTED LIKE ORDINANCES OF MUNICIPALITIES—EMERGENCY MEASURES EXEMPTED.

SYLLABUS:

An order of a district board of health made pursuant to the provisions of Section 1261-42, General Code, which is not declared to be an emergency measure and which has not been adopted, recorded and certified as are ordinances of municipalities as provided in said section, is not a valid order and an action to prosecute a violation thereof cannot be maintained.

COLUMBUS, OHIO, April 4, 1929.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This is to acknowledge your request for my opinion as contained in your letter which is as follows:

"I am writing you relative to an order of The District Board of Health of Monroe County, Ohio, on one phase of which your office rendered an opinion, the same being Opinion No. 2359, some few months back. However, the questions herein presented were not submitted to you at the time of the writing of the above opinion.

The above opinion had to do with an order of the Board of Health ordering all dogs in the county to be vaccinated. A check is now being made as to what dogs were vaccinated and several have been found that have failed to comply with the order of the Board of Health. The Board of Health is requesting prosecution of those now discovered to have failed to comply with its order.

The first question to be determined and which I am submitting to you is whether or not the order of the Board of Health complied with the formalities required and set out in Section 1261-42 of the General Code of Ohio. It will be noted that that section has a provision to the effect that all Orders and Regulations intended for the general public shall be adopted, seconded and certified as are ordinances of municipalities. There is an exception to this requirement which in substance provides 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.

A copy of the order or resolution of the Board of Health together with the certificate of publication as the same appears in the records of the District Board of Health is enclosed herein for your reference. It will be noted that such order or resolution is not in so many words declared to be an emergency measure. It would be also noted that the date of July 15, 1928, was set out as being the effective date of said order. Of course, if this order—by looking at it as a whole—can be considered to be an emergency order, then it would not be necessary for the same to be adopted and certified and recorded in the same manner as an ordinance of a municipality.

On the other hand, if the above named resolution or order does not come within the category of an emergency order or measure, then it must be adopted, seconded, certified and recorded in the same manner as an ordinance of a municipality. It will be noted that an ordinance of a municipality must be read on three different days unless a three-fourths vote of all members elected to council, taken by yeas and nays, dispenses with such reading. It is evident from the record of this order or resolution that nothing of that kind was done. However, it appears that the resolution was passed by unanimous vote of all those present. Only three or four meetings of the Board of Health are held during a year's time and a reading of resolutions on three different days would be more or less of an impractical nature. The question remains, however, whether or not this order of the Board of Health has been adopted as required by law and is effective so as to warrant the beginning of a prosecution for the violation thereof?

The second proposition is that I would like to have your office outline a Form of Affidavit to Charge an offense under this order of the Board of

Health in the event that your office determines that said order complies with the law. The third proposition is—in what court should a prosecution for violation of the foregoing order be instituted?

I would appreciate very much an opinion from your office relative to the validity of the order of the Board of Health and an outline of a Form of Affidavit to Charge an offense for violation of said order and your advice as to what court in which to institute prosecution for violation of said order.

A clipping of the publication notice of the foregoing order of the Board of Health is herewith enclosed for your reference."

The order of the district board of health which you enclose is as follows:

"May 11, 1928

The District Board of Health met on the above date with the following members present:

G. W. S., M. D.
E. G. N.
H. J. K.

On motion by G. W. S., M. D., seconded by H. J. K., that the following resolution be made. By direction and advice of the State Department of Health, Monroe County Commissioners, and Advisory Council of Monroe County. Therefore, be it resolved, that,

Whereas it appears there is danger of hydrophobia in Monroe County, Whereas it appears that many children and animals in Monroe County have been recently attacked and bitten by dogs. Now therefore we the Board of Health of Monroe Co. by certain recommendation resolve that. All dogs be immediately vaccinated and made immune to hydrophobia by a duly licensed veterinarian and a certificate issued by said veterinarian evidencing such vaccination and that a metal tag evidencing such vaccination be and remain attached to said dog for one year from date of vaccination. All dogs running at large in any manner contrary to this proclamation shall be deemed a nuisance and shall be dealt with accordingly.

This to become effective July 15, 1928.

* * * * * *

CERTIFICATE OF PUBLICATION

I, G. J. L., clerk of the District Board of Health, Monroe County, Ohio, do hereby certify that the foregoing order or resolution was duly published in THE SPIRIT OF DEMOCRACY, a newspaper published and of general circulation in Monroe County, Ohio. Said publications were on the following dates: July 18, 1928, and July 25, 1928.

Vote,

G. W. S., M. D.,	Yes.	G. J. L.,
H. J. K.	Yes.	Clerk of the District Board of Health,
E. G. N.	Yes.	Monroe County, Ohio.

Motion carried."

Considering the question of whether or not this order is an emergency order, and, therefor, not subject to the provisions of Section 1261-42, General Code, as to advertising, recording and certifying, it is noted that this section expressly provides

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.*" While very possibly an epidemic of hydrophobia would be such an emergency as to give a board of health just grounds for declaring an emergency, very apparently in this case the district board of health did not consider that such epidemic existed. In fact, the order itself makes no statement to the effect that any dogs in the district had been found to have hydrophobia. The order merely says that "it appears that there is danger of hydrophobia in Monroe County.". The district board of health having found that there appeared to be danger of hydrophobia in Monroe County, and that many children and animals had been recently attacked and bitten by dogs, ordered that all dogs be immediately vaccinated. The board might further have found that the conditions or events which gave rise to such order were such as to endanger the public health and upon such finding declare an emergency to exist. However, the board has made no finding of the existence of an emergency and I am of the opinion that the wording of the order itself precludes any construction, holding that the board declared this order to be an emergency measure.

In answer to your question as to the validity of this order, with a view of instituting criminal prosecution for its violation, it is expressly provided in Section 1261-42, General Code, that all orders of the board of health of the general health district intended for the general public shall be adopted, recorded and certified as are ordinances of municipalities. You state that these provisions of the section have not been complied with. There can be no question but that these provisions are mandatory, and, furthermore, under the well-established principle that all criminal statutes must be construed strictly, I am of the opinion that an action instituted to prosecute a violation of this order could not be maintained. In view of the foregoing, it is, therefore, unnecessary to suggest a form of affidavit.

Respectfully,
GILBERT BETTMAN,
Attorney General.

263.

DEPENDENT CHILD—COMMITMENT BY JUVENILE COURT TO PRIVATE CHILDREN'S HOME—LIABILITY FOR SUCH CHILD'S MAINTENANCE—FURTHER DISPOSITION OF SAID CHILD.

SYLLABUS:

1. *When a "dependent child" is permanently committed by a juvenile court to a private children's home or orphan asylum, duly accredited as such by the Board of State Charities, such private children's home becomes the sole and exclusive guardian of such child and is responsible for the child's future care, sustenance and medical attention, until such time as other lawful disposition is made of it.*

2. *While a child remains under the sole and exclusive guardianship of a duly accredited private children's home, under commitment of a juvenile court, there is no authority for the extension of poor relief from public funds for the benefit of such child.*

3. *Any institution, association or board to which a child has been permanently committed by a juvenile court may petition said court to make other disposition of such child because of physical, mental or moral defects.*