

1770

HOSPITALS—DEPARTMENT OF HEALTH—SECTION 6259 ET SEQ., G. C. AUTHORIZES THE DEPARTMENT TO GRANT LICENSES TO MAINTAIN MATERNITY HOSPITALS OR HOMES—BOARD MAY REVOKE LICENSE WHEN INSTITUTION MAINTAINED WITHOUT REGARD TO HEALTH, COMFORT OR MORALITY OF INMATES OR WITHOUT DUE REGARD TO SANITATION AND HYGIENE—PUBLIC HEALTH COUNCIL—AUTHORIZED TO MAKE AND AMEND SANITARY REGULATIONS, ADOPT REASONABLE SANITARY AND HEALTH REGULATIONS AND CONSIDER CONDITIONS AS TO ISSUANCE OF LICENSES—SECTIONS 1235, 6263 G. C.

SYLLABUS:

Under the provisions of Section 6259 et seq., General Code, authorizing the state board of health (now the department of health) to grant licenses for the maintenance of maternity hospitals or homes, and particularly by reason of the provision of Section 6263, General Code, authorizing such board to revoke any such license "when in the opinion of such board such institution is maintained without regard to the health, comfort or morality of the inmates thereof, or without due regard to sanitation and hygiene," the Public Health Council, being authorized by Section 1235, General Code, to make and amend sanitary regulations, has authority to adopt reasonable sanitary and health regulations governing the maintenance and operation of such institutions and the conditions on which such licenses may be issued.

Columbus, Ohio, September 2, 1952

Hon. John D. Porterfield, Director of Health
Columbus, Ohio

Dear Sir:

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

"Sections 6259 through 6277 of the General Code require the Director of Health to license maternity hospitals or homes, lying-in hospitals, or places where women are received and cared for during parturition. Section 12789 of the General Code is the penalty section applicable for a violation of the maternity hospital licensure law.

"In 1920 the State Board of Health adopted Regulations 71 through 94 of the Ohio Sanitary Code. (Copy of regulations attached.) Amendments to these regulations have been made from

time to time by the State Board of Health in accordance with the provisions of the Administrative Procedure Act.

"I do not find any specific authority in the statutes for the Public Health Council (successor to State Board of Health) to adopt rules and regulations governing the maintenance and operation of maternity hospitals. There is found, however, in Section 1237 under the general powers and duties of the department, authority to make special or standing orders or regulations for preventing the spread of contagious or infectious diseases.

"The rules and regulations found in the Ohio Sanitary Code with respect to the operation and maintenance of maternity hospitals are very ineffective. During the years these regulations have been in effect county prosecutors have been very reluctant to bring legal action against those hospitals failing to comply with such regulations for the reason that there is some doubt in their minds as to the validity of the regulations.

"In view of the fact there is no specific statute authorizing the Public Health Council of the Department of Health to promulgate rules and regulations governing the maintenance and operation of maternity hospitals, I should like to receive your formal opinion on the following question :

"1. Does the Public Health Council of the Department of Health have authority to adopt rules and regulations governing the maintenance and operation of maternity or lying-in hospitals?"

The laws relative to the public health and the administration thereof by the State, have undergone numerous changes, and the statutes now in force relating to the subject, refer in some cases to officers and boards which do not now exist, at least by the same names.

It would not be profitable to trace the history of this legislation in detail. It is sufficient to say that in 1921, the General Assembly by the enactment of what is known as the Administrative Code, to wit, Section 154-1 et seq., General Code, 109 O. L., 105, set up several administrative departments of the state government, one of which is known as the "Department of Health." It is provided in Section 154-3, General Code, as follows :

"The following administrative departments are created: * * *

"The department of health, which shall be administered by the director of health, hereby created; * * *."

The scope of this department and its general duties are set forth in Section 154-43, General Code, which reads as follows:

“The department of health shall have all powers and perform all duties vested by law in the state department of health, the commissioner of health, the public health council, or in the commissioner of health and the public health council acting jointly or otherwise, and the state inspector of plumbing; and also those vested in the secretary of state and the state registrar of vital statistics with respect to the registration of vital statistics as provided in sections one hundred and ninety-seven to two hundred and thirty-four, both inclusive, of the General Code.”

The organization of the “state department of health” is found in Chapter 19, Part First, Title III, which comprises Section 1232 et seq., of the General Code, originally enacted in 1917, 107 O. L., 522.

Section 1233, General Code, defines the duties of the Director of Health, as follows:

“The director of health shall perform all executive duties now required by law of the state board of health and the secretary of the state board of health, and such other duties as are incident to his position as chief executive officer. He shall administer the laws relating to health and sanitation and the regulations of the state department of health. He shall prepare sanitary and public health regulations for consideration by the public health council and shall submit to said council recommendations for new legislation. The director of health shall sit at meetings of the public health council but shall have no vote.”

Section 1234, General Code, provides for the appointment of a public health council consisting of seven members appointed by the Governor. The duties and powers of the public health council are set out in Section 1235, General Code, reading in part as follows:

“It shall be the duty of the public health council and it shall have the power:

“(a) To make and amend sanitary regulations to be of general application throughout the state. Such sanitary regulations shall be known as the sanitary code. * * *”

It will be observed that by these statutes it is made the duty of the director of health to prepare sanitary and public health regulations for consideration by the public health council, and it is made the duty of the council to enact such regulations.

In addition to this general power to enact regulations relative to the public health we find in Chapter 19, of Part Second, Title II, of the Code, specific authority and direction as to maternity boarding houses and lying-in hospitals. This chapter of the General Code, Sections 6259 to 6277, was enacted in 99 Ohio Laws, page 13. Section 6259 reads as follows:

“The commissioner of health may grant licenses to maintain maternity hospitals or homes, lying-in hospitals, or places where women are received and cared for during parturition. An application therefor shall first be approved by the board of health of the city, village or township in which such maternity hospital or home, lying-in hospital, or place where women are received and cared for during parturition is to be maintained. A record of the license so issued shall be kept by the state department of health, which shall forthwith give notice to the board of health of the city, village or township, in which the licensee resides, of the granting of such license and of the terms thereof.”

It is to be noted that the duty to issue such license is devolved by this statute on the commissioner of health, but as already pointed out, the provisions of Section 154-3, General Code, gather up and lodge in the present department of health all powers and duties that formerly pertained to the various health agencies theretofore recognized by law, including the commissioner of health.

Accordingly, we may read this statute as giving to the Department of Health the express authority to grant licenses to maternity hospitals or homes, and kindred institutions. The operation of an institution of this character certainly does involve matters of health of the inmates, and regulations pertaining thereto would be “sanitary regulations” within the meaning of the statutes conferring upon the public health council the authority to adopt sanitary regulations.

“Sanitary regulation” is a broad term and contemplates any and all regulations designed to conserve or improve the health of the public.” The word “sanitary” is defined in Webster’s International Dictionary, as follows:

“Of or pertaining to health; for or relating to the preservation or restoration of health.”

It appears to me, therefore, that we have in the general statutes relative to the adoption of sanitary or health regulations, and more specifically in the statutes relative to the particular institutions to which you refer,

abundant authority for the adoption by the public health council of regulations such as are referred to in your letter. It is true that the sections following Section 6259, contain a series of requirements which the law imposes on those who seek to operate such a hospital. Section 6260, General Code, provides that the license shall be granted for a term of not more than one year, and shall state the name of the licensee and the particular premises in which the business may be carried on, and the number of women and infants that may be boarded or treated at one time; but the statute does not contain any provision as to such number, or any basis for determining it. There are also provisions to the effect that the commissioner of health and the local boards of health shall annually, or at more frequent times, visit and inspect the institution. There is a provision in Section 6263, General Code, authorizing the revocation of the license by the state board of health, when a provision of the chapter is violated "or when in the opinion of such board such institution is maintained without regard to the health, comfort, or morality of the inmates thereof, or without due regard to sanitation and hygiene." There are further provisions requiring records of births.

I do not consider that the fact that the statute, itself, which lays down certain broad conditions for the issuance of the license, limits the power of the health council in enacting such further regulations as it deems necessary to the accomplishment of the purpose indicated by the statutes, so long as they are not inconsistent with the conditions set out in the statute. The necessity for such authority to adopt regulations supplementary to the provisions of the statute is emphasized by a consideration of Section 6263, General Code, which gives the department of health authority to revoke a license if "in its opinion" such hospital "is maintained without regard to the health, comfort or morality of the inmates thereof, or without due regard to sanitation and hygiene." Certainly, in the absence of regulations setting forth the manner in which the institution must be maintained, a summary revocation of a license resting merely on the "opinion" of some officer, would be arbitrary and indefensible.

A license is regarded in law as merely one feature of the regulation of an occupation. In the case of *Marmet v. State*, 45 Ohio St., 63, it was held:

“1. The general assembly has power (except as limited by section 18 of the schedule to the constitution) to regulate occupations by license, and to compel, by imposition of a fine, payment of a reasonable fee, where a special benefit is conferred by the public upon those who follow an occupation, or where the occupation imposes special burdens on the public, or where it is injurious to or dangerous to the public.”

Note the language used, “has power to *regulate* occupations *by license*.”

In 33 American Jurisprudence, page 371, it was said:

“As a general rule, a state or governmental authority which has power to deny a privilege altogether may grant a license therefor upon such conditions, not requiring the relinquishment of constitutional rights, as it sees fit to impose, and the person to whom the license is granted takes it upon such conditions. When a license or privilege is granted subject to such rules and regulations as may be imposed, the acceptance of the license is an acceptance of regulations adopted thereafter; and in such a case a violation of a license is a violation of the terms of its grant.”

In 53 Corpus Juris Secundum, page 553, it is said:

“It is generally proper to impose a license fee or tax for purposes of regulation generally on businesses, occupations, and privileges which are inherently harmful or involve danger to the public health, safety, morals or welfare, or where a special benefit is conferred at the expense of the general public.”

Specifically answering your question, it is my opinion that under the provisions of Section 6259 et seq., General Code, authorizing the state board of health, now the department of health, to grant licenses for the maintenance of maternity hospitals or homes, and particularly by reason of the provision of Section 6263, General Code, authorizing such board to revoke any such license “when in the opinion of such board such institution is maintained without regard to the health, comfort or morality of the inmates thereof, or without due regard to sanitation and hygiene,” the Public Health Council, being authorized by Section 1235, General Code, to make and amend sanitary regulations, has authority to adopt reasonable sanitary and health regulations governing the maintenance and operation of such institutions and the conditions on which such licenses may be issued.

Respectfully,

C. WILLIAM O'NEILL

Attorney General