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HEALTH, BOARD OF — GENERAL HEALTH DISTRICT — REGULATIONS — BY PROVISIONS OF SECTION 1261-30 G. C., PENALTIES PRESCRIBED BY SECTION 4414 G. C. MADE APPLICABLE TO SUCH REGULATIONS — NO AUTHORITY TO PRESCRIBE PENALTIES — BOARD MAY IN ITS ORDERS OR REGULATIONS REFER TO PROVISIONS OF SECTION 4414 G. C.

SYLLABUS:

By the provisions of Section 1261-30, General Code, the penalties prescribed by Section 4414, General Code, are made applicable to the regulations of the board of health of a general health district, and such board of health is without authority to prescribe penalties but may in its orders or regulations refer to the provisions of Section 4414, General Code.

Columbus, Ohio, October 27, 1944

Hon. Leon McCarty, Prosecuting Attorney

Mount Gilead, Ohio

Dear Sir:

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

“The Board of Health of Morrow County is setting up sanitary regulations covering the installation and operation of water supplies, private and public; sewage; sewage tanks, together with penalties therefor. They are using a form which has been used by municipalities, and this body of regulations is being set up for the most part for districts outside of the municipality. In Section 31 of the regulations, they have used General Code Section 4414 as a penalty provision. This section of the Code is contained in a chapter regulating the municipalities exclusively. I would like to know whether or not this section of the Code could be used for county-wide regulations, and be effective.”

The powers and duties of a district board of health are in the main those set out in what is known as the Hughes-Griswold Acts passed in 1919 and found in 108 O. L. 236, and in 108 O. L., Part II, p. 1085, the original act having been amended shortly after its passage. Prior to that time the matter of public health was largely under the control of municipalities and townships but the new act virtually made the administration of public health a function of the state though administered in large part by the local authorities.

Section numbers 1261-16 to 1261-43 General Code, were given to the new portions of the above act. Section 1261-16 provided that each city should constitute a city health district, and that the townships and villages in each county should be combined into a district and be known as a general health district. The board of health for such general district is frequently referred to as the “district board of health”.

The development of this system is discussed somewhat at length in an opinion which I rendered on March 13, 1943, found in 1943 Opinions, Attorney General, p. 123. That opinion dealt with a board of health of a city district, the first branch of the syllabus reading as follows:

“The board of health of a city district is authorized by Section 4413, General Code, to make such regulations as it deems necessary for the public health and the prevention or restriction of disease, but the penalties for violation of such regulations are fixed by Section 4414, General Code, and such board is not authorized to fix such penalties.”

Section 4413 General Code, referred to, authorizes the board of

health of a city to "make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances". It is further provided that regulations intended for the general public shall be adopted, advertised, recorded and certified as are ordinances of municipalities and the record thereof should be given in the courts of the state the same force and effect as are given such ordinances. It will be noted that there is no provision in that section such as is provided by Section 3628 General Code, for municipal councils, whereby a board of health is authorized to make violation of its orders or regulations a misdemeanor or to impose a penalty by way of fine or imprisonment for their violation.

A close similarity of language is found in Section 1261-42 General Code, relative to the powers of a board of health of a general health district. The pertinent portion of that section reads as follows:

"The board of health of a general health district may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. 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 municipalities and record thereof shall be given in all courts of the state the same force and effect as is given such ordinances, * * *"

Here, as in Section 4413 General Code, authority is given to the board of health to enact orders and regulations intended for the general public but there is no authority given to the board, either expressed or suggested by that section, to make the violation of such orders a misdemeanor or to prescribe penalties for their violation. In the case of a city board however, Section 4414 General Code makes the following provision for penalties and punishment:

"Whoever violates any provision of this chapter, or any order or regulation of the board of health made in pursuance thereof, or obstructs or interferes with the execution of such order, or wilfully or illegally omits to obey such order, shall be fined not to exceed one hundred dollars or imprisoned for not to exceed ninety days, or both, but no person shall be imprisoned under this section for the first offense, and the prosecution shall always be as and for a first offense, unless the affidavit upon which the prosecution is instituted, contains the allegation that the offense is a second or repeated offense."

It will be noted that the terms of that section are limited to violations of "any provision of *this chapter* or any order or regulation of the board of health made *in pursuance thereof*". And as the chapter of which that section is a part contains no reference to district boards of health but is limited to cities, it would not be possible to consider Section 4414 as furnishing a basis for punishment of those who might violate the regulations of a district board of health. We find, however, in Section 1261-30, General Code, which was also a part of the Hughes-Griswold Acts, the following provision:

"The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act (G. C. secs. 1261-16 to 1261-43 and 1245 et seq.). The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

This section has the effect of transferring to a district board of health powers and duties with respect to a general health district that are otherwise conferred and imposed upon the board of health of a municipality subject to the same limitations and conditions but without again enumerating those powers, duties, limitations and conditions which were specifically set forth in the act with reference to boards of health of municipalities.

The language of the section does not however, in my opinion, confer upon the district board of health the direct power to prescribe penalties for violation of its regulations but does have the effect of bringing into effect as to such regulations, the penal provisions of Section 4414 General Code. This question was directly before one of my predecessors in an opinion found in 1929 Opinions, Attorney General, p. 1010, where it was held:

"An order of a district board of health made pursuant to the provisions of Section 1261-42, General Code, intended for the general public, may contain a reference to the statutory penalty for violation of such orders, which penalty is set forth in Section 4414, General Code. If reference to a penalty is made in such order, it should be so worded as to clearly indicate that the district board of health is not fixing the penalty."

The then Attorney General, commenting upon the provisions of Section 1261-30 General Code, said:

“The powers and duties conferred and imposed by law upon the board of health of a municipality and the procedure and penalties for violation of the sanitary regulations of a board of health which are in this section expressly transferred to the district board of health are those powers, duties, procedure, etc., as contained in Sections 4404 et seq. of the General Code. Section 4414, General Code, which you quote, is therefore clearly applicable to orders and regulations made by a district board of health and intended for the general public under the provisions of Section 1261-42, General Code.

Regarding the question of including the penalty for violation of an order of the district board of health, intended for the general public, in such order, the district board has no authority to fix such penalty. However, if the district board of health desires to stipulate in such order the penalty which may be imposed for its violations, such stipulations should provide that whoever violates the order shall be fined as set forth in Section 4414, General Code, making particular reference to the statute so as to indicate that it is not the district board of health that is fixing the penalty”.

In specific answer to your question, therefore, it is my opinion that by the provisions of Section 1261-30, General Code, the penalties prescribed by Section 4414, General Code, are made applicable to the regulations of the board of health of a general health district, and such board of health is without authority to prescribe penalties but may in its orders or regulations refer to the provisions of Section 4414, General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General