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TUBERCULOSIS, PULMONARY — ACTIVE STAGE — TUBERCULE BACILLI DISCHARGED—FAILURE OF PATIENT TO BECOME ISOLATED—PROSECUTION—LOCAL AUTHORITY —SECTIONS 1235, 4414 G. C.

SYLLABUS:

Any person, suffering from pulmonary tuberculosis in such an active stage that tubercle bacilli are being discharged, who neglects or refuses to isolate himself as required by the sanitary code, enacted by the public health council, pursuant to Section 1235, General Code, can be prosecuted for said violation by a local authority, and if found guilty, penalized in accordance with Section 4414, General Code.

Columbus, Ohio, August 29, 1951

Honorable Dorothy Kennedy, Prosecuting Attorney  
Brown County, Georgetown, Ohio

Dear Madam:

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

“Pursuant to our phone conversation, the facts as presented to me by the Brown County Board of Health and the legal problem pertaining thereto are as follows:

“The board of health has on two occasions ordered and sent a resident of Brown County, ‘A’, who is suffering from pulmonary tuberculosis, and who is, in its opinion, a menace to the public health and cannot receive suitable care and treatment at home, to a hospital for tuberculosis, and on each occasion, ‘A’ leaves the hospital and returns home, absolutely refusing to stay at the hospital. The expense of his removal, care, treatment, and maintenance was paid by the Brown County Commissioners.

“The board of health, in this case has proceeded under Section 3139-20 of the General Code of Ohio, which gives it the authority to order *removed* to a hospital for tuberculosis persons 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; however, how can the board enforce its order, when the person refuses to remain at the tuberculosis hospital? \* \* \*”

Your attention is invited to Section 1234, General Code, which provides for the establishment of a public health council, and to Section 1235, General Code, which reads 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.”

The public health council, pursuant to this section, adopted a sanitary code on May 4, 1920, regulation 2 of which reads in part as follows:

“The diseases, disabilities, and infestations herein named and classified as class ‘A’ and class ‘B’ are declared to be dangerous to the public health, are made notifiable, and the occurrence of cases or suspected cases in Ohio shall be reported as provided in the following regulations.

Class ‘A’

Tuberculosis—1: pulmonary  
2: non-pulmonary.”

The control of pulmonary tuberculosis is provided for in Regulation 16, Ohio Sanitary Code, effective July 1, 1951, which reads as follows:

“These methods of control shall be enforced by all *local health officials* in the state of Ohio and shall be observed by *any person afflicted with any of the following named diseases or conditions* and by their attendants or associates. \* \* \*

“Regulation 16-1 (Isolation) Persons suffering from the following diseases shall be isolated as herein provided:

“\* \* \* Tuberculosis: as long as tubercle bacilli are discharged by the patient.” (Emphasis added.)

The public health council defines the word “isolation,” in Regulation 11, of the Ohio Sanitary Code, effective July 1, 1950, as follows:

“*Isolation.* The separation for the period of communicability of infected persons from susceptible persons, in such places and under such circumstances as will prevent the direct or indirect conveyance of the infectious agents to susceptible persons.”

Section 1238, General Code, reads as follows:

“Local boards of health, health authorities, and officials, officers of state institutions, police officers, sheriffs, constables,

and other officers and employers of the state or any county, city or township, shall enforce the quarantine and sanitary rules and regulations adopted by the state board of health."

Please note that the above quoted Section 1238, General Code, contains the phrase, "rules and regulations adopted by the *state board of health*." It is necessary to determine if this section is applicable to the rules and regulations adopted by the public health council.

Section 1232, General Code, reads in part as follows:

"There is hereby created a state department of health, which shall exercise all the powers and perform all the duties now conferred and imposed by law upon the state board of health, and all such powers, duties, procedures and penalties for violation of its sanitary regulations shall be construed to have been transferred to the state department of health by this act (G. C. Sections 1232—1236-5) \* \* \*

"\* \* \* The state department of health shall consist of a commissioner of health and a public health council."

Thus, we see that by the enactment of this section of the General Code, a state department of health was created which was to exercise all the powers and perform all the duties formerly conferred and imposed upon the state board of health. This newly created state department of health consisted of a commissioner of health and a public health council on which the power was conferred and the duty imposed to make and amend sanitary regulations to be of general application throughout the state. Subsequently, the legislature, when it enacted the Administrative Procedure Act, created the department of health, abolished the office of commissioner of health, and transferred to the department of health all the powers and duties formerly vested in the state department of health. The status of the public health council remained the same as it had been, as a part of the state department of health, as is evidenced by Section 154-44, General Code, which reads in part, as follows:

"The public health council provided for by Section 1234 of the General Code shall continue to exist in the department of health as hereby created, and shall exercise all powers vested in it by law."

From the foregoing sections of the General Code, it is apparent that the public health council has been empowered to adopt sanitary rules

and regulations, which were formerly adopted by the state board of health, and therefore, by virtue of Section 1238, General Code, a mandatory duty to enforce the sanitary rules and regulations of the public health council is imposed upon the local authorities.

Thus, we see that the public health council has declared pulmonary tuberculosis to be a class "A" disease, dangerous to the public health, and notifiable. It has provided that persons suffering from pulmonary tuberculosis shall be isolated if they are discharging tubercle bacilli, and has made it the mandatory duty of the afflicted person, his attendants, and associates, to accomplish such isolation. It has also imposed the mandatory duty of enforcing these regulations on the local health authorities.

I will assume for the purpose of this opinion, though you do not so state, that the Brown County Board of Health is a district board of health as provided by Section 1261-16 et seq., General Code. An examination of these sections reveals that the townships and villages in each county shall be combined into a health district, known as a general health district, that in each general health district there shall be a district board of health and that the district board of health shall appoint a district health commissioner, whose powers and duties are defined by Section 1261-19, General Code, which reads in part as follows:

"The district health commissioner shall be the executive officer of the district board of health and shall carry out all orders of the district board of health and of the state department of health. *He shall be charged with the enforcement of all sanitary laws and regulations in the district*, and shall have within the general health district all the powers now conferred by law upon health officers of municipalities." (Emphasis added.)

It is apparent from this section that the health commissioner is charged with the mandatory duty of enforcing all the sanitary rules and regulations in the district, and as pointed out supra by Section 1234, General Code, the sanitary code, adopted by the public health council, is of general application throughout the state. It therefore follows that the health commissioner is charged with the enforcement of the sanitary code.

Section 1261-30, General Code, reads in part as follows:

"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. Sections 1261-16 to 1261-43 and 1245 et seq.)”

An examination of the chapter on municipal health boards, reveals that the procedure to be followed in prosecuting violations of the sanitary regulations of a board of health are set out in Sections 4416, 4417, 4418, General Code. The penalty for such violation is provided for in Section 4414, General Code, which reads in part as follows:

“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.”

The Department of Health, having received many inquiries such as yours, and not being absolutely certain as to the limits of the power, vested in local health boards, to enforce the sanitary code, brought this problem to the attention of the 99th General Assembly. The legislature thereupon enacted Section 4429-1, General Code, effective August 10, 1951, which reads as follows:

“When a person has or is suspected of having a *communicable disease for which isolation is required by the board of health* or the state department of health, the board of health shall, at once, cause the individual to be separated from susceptible persons in such places and under such circumstances as will prevent the direct or indirect conveyance of the infectious agents to susceptible persons, and prohibit entrance to or exit from such places without written permission from the board of health, and shall enforce such restrictive measures as may be prescribed by the state department of health.” (Emphasis added.)

The above quoted section is a part of the chapter dealing with municipal health boards and, as was pointed out supra by Section 1261-30, General Code, applies with equal force to district health boards. Thus, the legislature has clearly spelled out in one section, the power of a local health board to enforce the sanitary code of the department of health,

that before could only be ascertained after a thorough and careful examination of a multitude of sections of the General Code.

It is therefore my opinion, and you are so advised that any person suffering from pulmonary tuberculosis in such an active stage that he is discharging tubercle bacilli, who neglects or refuses to isolate himself as required by the sanitary code, enacted by the public health council, pursuant to Section 1235, General Code, can be prosecuted for said violation by a local authority, and if found guilty, penalized in accordance with Section 4414, General Code.

It is only proper that I point out that, while the mandatory duty to isolate one suffering from pulmonary tuberculosis in such an active stage that tubercle bacilli are being discharged is imposed on local health authorities, if imprisonment is a part of the penalty, such could not be carried out without a violation of the sanitary code by the authorities, unless the infected person were imprisoned in such a place and under such circumstances as would prevent the direct or indirect conveyance of the infectious agents to susceptible persons.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General