

dispensing and redeeming Welfare Warrants of the State of Ohio which are to be engraved, printed, and issued in serial numbers, every Thursday to persons who qualify under the provisions of this amendment and present to the nearest distributive agency a letter of credit and record of payment and identification based on sworn affidavits entitling them to receive benefits under this act.

This amendment also provides that the General Assembly shall, from time to time, adjust the payment of Welfare Warrants to changing price levels in such a manner as to assure the maintenance of the decent standard of living, the general welfare, and the social security sought in this amendment to the Constitution of the State of Ohio."

I am of the opinion that the foregoing summary is a fair and truthful statement of the proposed constitutional amendment and accordingly submit for uses provided by law the following certification:

"Without passing upon the advisability of the adoption of the proposed constitutional amendment and without passing upon the constitutionality of same, but pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, I hereby certify that the foregoing summary is a fair and truthful statement of the proposed constitutional amendment. HERBERT S. DUFFY, Attorney General."

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2991.

STATE DEPARTMENT OF HEALTH—NO AUTHORITY TO COMPEL ATTENDANCE OF LOCAL OFFICERS TO GENERAL CONFERENCE—EXPENSES CANNOT BE PAID BY LOCAL SUBDIVISIONS—IF CONFERENCE ON WATER PURIFICATION OR SEWAGE DISPOSAL, SUBDIVISIONS MAY PROVIDE EXPENSES AND INSTRUCT OFFICERS TO ATTEND.

SYLLABUS:

Neither Sections 1240-2 nor 1252-1, General Code, confer upon the State Department of Health authority to compel attendance of local of-

fficers to a general conference called by the Department of Health for information and education as to matters coming within those sections. The expenses of such officers therefore can not be paid by their local subdivisions. However, should local subdivisions desire attendance of an officer to a conference called by the State Department of Health on Sewage Disposal and Water Purification because of information or training needed for some definitely contemplated course of action on water purification or sewage disposal, the subdivisions may instruct said officers to attend such a conference and provide expenses therefor.

COLUMBUS, OHIO, September 19, 1938.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your recent communication. Your letter reads in part as follows:

Question. "Is the State Department of Health authorized by law to call the engineers or operators of water purification and sewage treatment plants, into annual conference for the purpose of giving instructions regarding the operation of such plants, and if so, do the reasonable expenses of such officers incurred in attending such meetings, constitute legal charges against the taxing subdivisions they represent, provided, of course, they receive an official certificate of attendance from the State Health Department?"

With your requests were included two memoranda prepared by committees of the Ohio Conference on Water Purification and the Ohio Conference on Sewage Treatment. From these it appears that said Conferences are called by the State Director of Health and are in nature an operators' conference of the plants in question where problems of plant operation are studied and discussed. Membership in the conference is limited to those actually in charge of or officially interested in Ohio Sewage treatment or water filtration and softening plants. Members of the State Health Department are active members *ex officio*. The conferences are designed to establish better cooperation with the State Health Department in the control of water purification operation and sewage disposal, and to enable each municipality to take advantage of the experience of other cities and towns.

From copies of the Constitutions of the Association on water purification and Association on Sewage treatment and the conference programs enclosed, it can be seen that the conference is really a serious study

of problems and means of improvement and does afford much helpful service to all participants.

In attempting to discover whether or not statutory authority exists for allowing payment of the conference expenses of official participants out of public funds, we must of necessity face two questions. Has the State Director of Health power to call such a conference, and under the Code authority given to make attendance of municipal officers at such a conference an official duty?

Section 1240, General Code, provides for the approval of the State Board of Health in certain cases involving the installation of water supply or sewage. Section 1240-1, General Code, provides that plans for the disposal of waste must be approved by the department of health. In neither of these sections does it appear or is it claimed that power to call a conference is given. Section 1240-2, General Code, confers powers of general supervision in matters of sewage disposal as follows:

“The state department of health shall exercise general supervision of the disposal of sewage and industrial wastes and the operation and maintenance of works or means installed for the collection, treatment or disposal of sewage and industrial wastes. Such general supervision shall apply to all features of construction, operation and maintenance of such works or means which do or may affect the proper treatment or disposal of such sewage and industrial wastes. For the purpose of exercising such general supervision the state department of health shall investigate the works or means employed in the collection, treatment and disposal of sewage and industrial wastes whenever deemed necessary by the department and whenever requested to do so by local health officials; and may adopt and enforce orders and regulations governing the operation and maintenance of such works or means and may require the submission of records and data of construction, operation and maintenance, including plans and descriptions of existing works or means of disposal of such sewage or wastes. When the state department of health shall require the submission of such records or information the public officials or persons, firm or corporation having the works in charge shall promptly comply with such order.”

In like manner, Section 1252-1, General Code, confers power of general supervision over public water supplies as follows:

“The state department of health shall exercise general supervision of the operation and maintenance of the public water

supply and water works systems throughout the state. For the purposes of this act a public water supply and water works system shall include any such system publicly or privately owned which is of a public or quasi-public nature installed for a municipality or part thereof, an unincorporated community, a county sewer district or other land outside a municipality, a state, county, district or municipal public institution, a privately owned institution, university, college, seminary or school, club, church, factory or other place of employment, or other public, quasi-public or privately owned institution, building or place used for the assemblage or employment of persons. Such general supervision shall include all features of construction, operation and maintenance of systems for supply, treatment, storage and distribution, which do or may affect the sanitary quality of the water supply. For the purpose of exercising such general supervision the state department of health shall investigate the public water supplies throughout the state as frequently as is deemed necessary by the department, and whenever requested to do so by the local health officials; and may adopt and enforce orders and regulations governing the construction, operation and maintenance of such public water supply and water works systems, and may require the submission of records of construction, operation and maintenance including plans and descriptions of existing works. When the state department of health shall have required the submission of such records or information the public officials or person, firm or corporation having the works in charge shall promptly comply with such request."

Section 1240-2, General Code, carefully sets forth the matters to which such general supervision shall apply as all features of construction, operation and maintenance of the works and means affecting proper treatment or disposal of sewage. Following this the section elaborates upon the power permitted the board in exercising its general supervision. A careful perusal of the context of the section as quoted above reveals that the board has full power to examine, inspect and investigate the various plants under its jurisdiction. However, I do not see that the power to call a state wide conference for general discussion of sewage problems and information, and to compel attendance of the officers of the local plants under the Board's supervision is given in this section.

A like examination of Section 1252-1, *supra*, does not reveal that this power to call a general conference and to compel attendance is included in the powers of general jurisdiction conferred therein.

In reaching this conclusion, I am further influenced by the fact that

the legislature was not unmindful of the value of such conferences. Section 1245, General Code, included in the same chapter with the sections describing organization and power of the department of health expressly confers power to call a general conference upon the State Department of Health and provides for the expenses therefor as follows:

“The state department of health shall make provision for annual conferences of district health commissioners for the consideration of the cause and prevention of dangerous communicable diseases and other measures to protect and improve the public health. Each board of health or other body or person appointed or acting in place of a board of health shall appoint its health commissioner or health officer a delegate to such annual conferences. The district board of health shall pay the necessary expenses of such delegate upon presentation of a certificate from the state commissioner of health that the delegate attended the sessions of such conference.”

This section, however, so specifically limits the purpose of the conference and the group from which its delegates are to come that it cannot possibly serve as authority permitting the conferences under discussion. In the chapter immediately preceding that which deals with the State Health Department, may be found sections relating to the State Highway Department. Section 1183-1, General Code, of this group specifically permits the director to call a conference of resident district deputy directors and assistants each year for a conference and school as to the best methods in road building. Expenses for this conference are expressly provided for in that section.

If the legislature had intended that the Department of Health should call an annual conference or school under its power of general supervision and compel attendance of local officers at such a conference, it could have expressly so provided. And in the absence of such provision, it is not the province of this office to add to legislative intent by creating implications from the nuances of meaning found in terms used. In the consideration of this matter, as in every other case with respect to payment of expenses from public funds, we must keep in mind the rule that such expenditures can legally be made only upon clear statutory authority therefor.

In the absence of statutory power to call an official conference where attendance is an official duty, a conference held at the instance of the State Department of Health becomes like any other conference of a general educational nature. Such being the case a question is presented as to whether the local subdivision may authorize attendance and so pro-

vide expenses for the officials attending. There have been numerous cases presented to this office involving this question. Meetings of municipal officers for general discussion and plans as to relief problems; meeting of Recreation Associations for general instructions as to recreation; meeting of Police officials where training and instruction were given. (Annual Report of the Attorney General for 1912, Volume I, page 433; Opinions of the Attorney General for 1919, Volume I, page 143; *State vs. Wright*, 17 G. C. (N. S.) 396; *Richardson vs. State*, 66 O. S., 108; Opinions of the Attorney General for 1929, Volume III, page 1975 and Opinions of the Attorney General for 1930, Volume III, page 1747.) Each case must of necessity be determined by its own peculiar circumstances. However, the determining rule, if we may so refer to it, has established in all cases a distinction between expenditures incurred by a public officer when on a mission for his political subdivision which has to do with some *definite and specific project then being carried out*, and trips that may be taken with no other object in view than the mere acquiring of general information with regard to the duties of his office or position.

An opinion of the Attorney General for 1929, Volume III, page 1975, clearly sets forth the rule that an officer must be sent to a convention in furtherance of a definitely contemplated course of action rather than merely to attend for knowledge of general ideas and information. Applying these rules to the circumstances before us, I am constrained to advise you that it is my opinion that neither Sections 1240-2 nor 1252-1, General Code, confer upon the State Department of Health authority to compel attendance of local officers to a general conference called by the Department of Health for information and education as to matters coming within those sections. The expenses of such officers therefore can not be paid by their local subdivisions. However, should local subdivisions desire attendance of an officer to a conference called by the State Department of Health on Sewage Disposal and Water Purification because of information or training needed for some definitely contemplated course of action on water purification or sewage disposal, the subdivisions may instruct said officers to attend such a conference and provide expenses therefor.

Respectfully,

HERBERT S. DUFFY,

Attorney General.