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HEALTH, DEPARTMENT OF — POWER DELEGATED UNDER SECTION 1261-2 GENERAL CODE — PUBLIC HEALTH COUNCIL NOT AUTHORIZED TO ADOPT RULES AND REGULATIONS, PLUMBING AND DRAINAGE IN PRIVATE DWELLINGS, MUNICIPALITIES OR POLITICAL SUBDIVISIONS WHERE ORDINANCES OR RESOLUTIONS NOT ADOPTED OR ENFORCED.

SYLLABUS:

*The power delegated to the Department of Health, under the provisions of Section 1261-2, General Code, does not authorize the Public Health Council to adopt rules and regulations for the construction, installation and inspection of plumbing and drainage in private dwellings in municipalities or other political subdivisions wherein ordinances or resolutions have not been adopted or enforced.*

Columbus, Ohio, December 19, 1941.

Dr. R. H. Markwith, Director of Health,  
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Has the Public Health Council, by power delegated to the Department of Health in Section 1261-2 of the General Code of Ohio, authority to adopt and enforce rules and regulations for the construction, installation and inspection of plumbing and drainage in private dwellings and residences throughout the State of Ohio, which are not located in municipalities or other political subdivisions wherein ordinances or resolutions have been adopted and are being enforced by the proper authority regulating plumbing or prescribing the character thereof.”

The State Department of Health, formerly the State Board of Health, is composed of a Commissioner of Health (now the Director of Health) and a Public Health Council. In the creation of this department, the powers and duties have been separated by conferring upon the Director only those functions which are executive and administrative in character and granting to the council all others. Powers delegated to the State Department of Health, repose, therefore, depending upon their classification, in the Director or the Public Health Council.

Certain functions are conferred upon the Department of Health

under the provisions of Section 1261-2, General Code, which reads as follows:

“In the department of health there shall be such number of plumbing inspectors as the necessities of the work shall require and the appropriations for such inspections will permit. Such inspectors shall be practical plumbers with at least seven years’ experience, and skilled and well trained in matters pertaining to sanitary regulations concerning plumbing work.

The department of health shall have the power to make and enforce rules and regulations governing plumbing and register those persons engaged in or at the plumbing business to carry out the provisions of this act. (G.C. §1261-2 et seq.)

Plans and specifications for all sanitary equipment or drainage to be installed in or for buildings coming within the provisions of this act shall be submitted to and approved by the department of health before the contract for installation of the sanitary equipment or drainage shall be let.”

The rule making power set forth in the foregoing section is legislative in character and is, therefore, conferred upon the Public Health Council of the Department of Health. The enforcement aspects of such regulations are administrative and hence properly under the jurisdiction of the Director of Health.

In view of this obvious conclusion, I interpret your inquiry as a request for information with respect to the power of the Public Health Council to adopt rules and regulations, rather than the power to enforce such regulations.

It will be noted that under the provisions of Section 1261-2, supra, the Public Health Council has only power to make rules and regulations governing plumbing in carrying out the provisions of the act.

The act; Sections 1261-2 to 1261-15, inclusive, General Code, specifically limits the jurisdiction of plumbing inspectors by enumerating the types of buildings that may be inspected for insanitary or defective plumbing found therein. In this regard, Section 1261-3, General Code, provides:

“It shall be the duty of said inspector of plumbing, as often

as instructed by the state board of health, to inspect any and all public or private institutions, sanitariums, hospitals, schools, prisons, factories, workshops, or places where men, women or children are or might be employed and to condemn any and all unsanitary (insanitary) or defective plumbing that may be found in connection therewith, and to order such changes in the method of construction of the drainage and ventilation, as well as the arrangement of the plumbing appliances, as may be necessary to insure the safety of the public health.

Such inspector shall not exercise any authority in municipalities or other political subdivisions wherein ordinances or resolutions have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof."

The jurisdiction of plumbing inspectors with respect to the buildings enumerated in the foregoing section is further limited by the last paragraph in the section which prevents the exercise of any authority in municipalities or other political subdivisions except in certain cases. This limitation of the jurisdiction of inspectors cannot be construed as a grant of power increasing the authority of said inspectors so as to enlarge the class of buildings that may be condemned because of defective plumbing when ordinances or resolutions have not been adopted or enforced.

Since the provisions of the act with respect to insanitary or defective plumbing concern only certain enumerated buildings, not including private dwellings, the authority to make rules and regulations to carry out the provisions of the act does not extend to private dwellings.

In specific answer to your inquiry, therefore, it is my opinion that the power delegated to the Department of Health, under the provisions of Section 1261-2, General Code, does not authorize the Public Health Council to adopt rules and regulations for the construction, installation and inspection of plumbing and drainage in private dwellings in municipalities or other political subdivisions wherein ordinances or resolutions have not been adopted or enforced.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.