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A HEALTH COMMISSIONER MAY INSTITUTE CRIMINAL PROCEEDINGS TO ENFORCE SANITARY RULES AND REGULATIONS—§§3701.34, CHAPTER 3701, 3701.57, 3707.48, 3707.99, 3701.56, R.C.—REPORTS OF THE ATTORNEY GENERAL 1903-1908, PAGE 158, OPINION 691, OAG, 1951, §§1232, 1238, G.C.—§§3709.11, 3707.51, R.C.

SYLLABUS:

A health commissioner of a general health district, appointed under Section 3709.11, Revised Code, is authorized by Section 3701.56, Revised Code, to enforce the sanitary rules and regulations adopted by the public health council under Section 3701.34, Revised Code, and may institute criminal proceedings for violations of such sanitary rules and regulations.

Columbus, Ohio, October 17, 1962

Hon. Philip D. Brumbaugh, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Does a health commissioner of a general health district have any authority to institute criminal proceedings for violations of sanitary regulations adopted by the public health council?”

“The specific problem involves enforcement of regulations in the Ohio Sanitary Code relating to camp sanitation as applicable to migrant workers. The Ohio Sanitary Code requires that a permit be obtained (Regulation 233) and provides minimum requirements relating to site, equipment, facilities and maintenance (Regulation 234).

“I assume that the Ohio Sanitary Code was adopted in accordance with the provisions of Section 3701.34, Revised Code.

“Section 3701.56, Revised Code, directs local health officers to enforce sanitary rules and regulations adopted by the department of health. However, Section 3701.57 requires all prosecutions for the violation of regulations of the department of health to be instituted by the director of health.

“Section 3707.48, Revised Code, prohibits violating any order or regulation of a general health district lawfully adopted, but no reference is made to regulations adopted by the public health council for general application throughout the state.

“It appears to me, from an examination of the statutes, that local health authorities have effective enforcement power only for violation of its own orders and regulations lawfully adopted under Section 3709.21, Revised Code, or where, under 3707.01, Revised Code, it has determined that a nuisance exists. If such is the case, prompt and effective enforcement for violations of the Ohio Sanitary Code appears impracticable, for local boards of health in small counties are not in session daily.”

Chapter 3701., Revised Code, deals with the state department of health.

Section 3701.02, Revised Code, reads as follows:

“There is hereby created a department of health. The department shall consist of a director of health and a public health council.”

In general, the director of health administers the laws relating to health and sanitation and the regulations of the department of health (Section 3701.03, Revised Code). The public health council acts as the reviewing authority and the rule-making body for the department. Under division (A) of Section 3701.34, Revised Code, the public health council has the duty to:

“(A) Make and amend sanitary regulations to be of general application throughout the state. Such sanitary regulations shall be known as the sanitary code;”

As to prosecutions by the department of health, Section 3701.57, Revised Code, reads as follows :

“All prosecutions and proceedings by the department of health for the violation of sections 3701.01 to 3701.64, inclusive, 3703.01 to 3703.09, inclusive, 3705.01 to 3705.30, inclusive, 3709.01 to 3709.04, inclusive, 3709.07 to 3709.11, inclusive, 3709.13, 3709.17, 3709.18, 3709.21 to 3709.36, inclusive, and 6111.09 to 6111.30, inclusive, of the Revised Code, or for the violation of any of the orders or regulations of the department, shall be instituted by the director of health. *The laws prescribing the modes of procedure, courts, practice, penalties, or judgments applicable to boards of health of a general or a city health district, shall apply to the department and the violation of its rules and orders.* All fines or judgments collected by the department shall be paid into the state treasury to the credit of the general revenue fund.” (Emphasis added)

While statutory penalties are provided for violations of the sections of law referred to in Section 3701.57, *supra*, I am unable to find any specific penalty for a violation of a rule or regulation of the department of health. It will be noted, however, that Section 3701.57, *supra*, states that the laws prescribing the penalties applicable to boards of health of a general or a city health district shall apply to the department and the violation of its rules and orders; and in this regard, Section 3707.48, Revised Code, provides :

“No person shall violate sections 3707.01 to 3707.53, inclusive, of the Revised Code, or any order or regulation of the board of health of a city or general health district made in pursuance thereof, obstruct or interfere with the execution of such order, or willfully or illegally omit to obey such order.”

The penalty for a violation of a rule of a board of health of a city or general health district is found in division (c) of Section 3707.99, Revised Code, which reads :

“(C) Whoever violates section 3707.48 or 3707.50 of the Revised Code shall be fined not more than one hundred dollars or imprisoned not more than ninety days, or both. No person shall be imprisoned under division (C) of 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.”

I thus conclude that the penalty provision of division (c) of Section 3707.99, *supra*, is applicable to violations of rules and regulations of the state department of health.

Section 3701.56, Revised Code, imposes a duty on boards of health of general and city health districts to enforce the quarantine and sanitary rules and regulations of the department of health. That section reads as follows:

“Boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city or township, shall enforce the quarantine and sanitary rules and regulations adopted by the department of health.”

Section 3701.57, *supra*, does require that all prosecutions and proceedings *by the department of health* for the violation of any of the orders or regulations of the department shall be instituted by the director. That provision is, however, clearly restricted to actions taken *by the department*, and I see no reason to construe it to bar local boards from taking the action which is specifically enjoined on them by Section 3701.56, *supra*. And enforcement of the state rules and regulations, for violation of which a penalty is prescribed, would clearly be an institution of criminal proceedings.

I might note that my above conclusions coincide with those expressed in an attorney general's opinion issued on January 6, 1906, reported at page 158 et seq., Opinions of the Attorney General for 1906, it being stated at page 159 of the opinion:

“It is by the same act made the duty of the local boards of health, and other health authorities to enforce all sanitary rules and regulations adopted by the State Board of Health and in the event of failure or refusal on the part of any member of such boards or other officials and persons mentioned in that act to do so, he or they shall be subject to a fine of not less than \$50.00 upon a first conviction and upon conviction of a second offense of not less than \$100.00.

“It is apparent that the power is given to the State Board of Health in such matters to adopt a rule with relation thereto, and to cause the same to be executed by the local boards of health and health authorities and officials, and it is only when they fail to act or in case of an emergency, that the State Board of Health is authorized to act. In the latter event prosecutions for violation of

such order may be brought by any officer, member of the state or local boards of health or any official or private person.”

Although since the issuance of the 1906 opinion the public health laws have undergone certain revisions, the relationship and duties of the new entities created for public health purposes have remained constant in regard to the enforcement of regulations adopted on the state level.

Also, in Opinion No. 691, Opinions of the Attorney General for 1951, page 412, it was held:

“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.”

At pages 414 and 415 of that opinion, in referring to former Section 1232 and 1238, General Code (now Sections 3701.02 and 3701.56, Revised Code), it is stated:

“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.”

Coming to the instant question, the state sanitary code, including the regulations referred to in your request, was adopted pursuant to the authority of Section 3701.34, *supra*. Those sanitary regulations are therefore regulations which must be enforced by the board of health of a general health district, and by health authorities, etc. Referring to the health commissioner of a general health district, Section 3709.11, Revised Code, reads, in part, as follows:

“* * * The commissioner shall be the executive officer of the board and shall carry out all orders of the board and of the department of health. *He shall be charged with the enforcement of all sanitary laws and regulations in the district.* * * *”

The health commissioner is thus obviously a “health authority or official” within the purview of Section 3701.56, *supra*, and is authorized to enforce the sanitary rules and regulations of the state department of health.

I might again note that under Section 3701.57, *supra*, the laws prescribing the modes of procedure, courts, practice, penalties, or judgments applicable to city or general health districts apply to violations of rules of the state department of health, and such laws should be followed by the health commissioner in enforcing those rules. As to institution of prosecution, Section 3707.51, Revised Code, which deals with prosecution by city and general health districts, and is applicable to a prosecution for violation of a state regulation, reads as follows:

“Prosecutions under sections 3707.01 to 3707.53, inclusive, of the Revised Code, and the civil action under section 3707.49 of the Revised Code, shall be instituted before a judge of the county court within the county, or mayor, or police judge of the municipal corporation, in which the offense was committed or the offending person resides.”

In answer to your specific question, therefore, I am of the opinion and you are advised that a health commissioner of a general health district, appointed under Section 3709.11, Revised Code, is authorized by Section 3701.56, Revised Code, to enforce the sanitary rules and regulations adopted by the public health council under Section 3701.34, Revised Code, and may institute criminal proceedings for violations of such sanitary rules and regulations.

Respectfully,

MARK McELROY

Attorney General