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BOARD OF HEALTH—VIOLATORS OF RULES AND REGULATIONS ADOPTED BY BOARD SUBJECT TO PROSECUTION—
§§3707.48, 3707.99, 3709.21, 3709.22, R.C.

SYLLABUS :

The penalties set out in Section 3707.99, Revised Code, read in connection with Section 3707.48, Revised Code, will apply to violation of rules and regulations of a general health district, made under authority of Sections 3709.21 and 3709.22, Revised Code. Opinions No. 672 for 1929 and No. 7185 for 1944 approved and followed.

Columbus, Ohio, August 12, 1959

Hon. Ralph A. Hill, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir :

I have before me your communication in which you state that the board of health of your county has adopted certain rules and regulations, under the authority of Sections 3709.21 and 3709.22, Revised Code, providing for the inspection and licensing of grocery stores, meat dealers and other establishments where food is manufactured or sold.

Section 3709.21, Revised Code, reads in part :

“The board of health of a general health district may make such orders and regulations as are 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 municipal corporations and the record thereof shall be given in all courts the same effect as is given such ordinances, * * *.”

Section 3709.22, Revised Code, reads in part :

“* * * The board may also provide for the inspection of dairies, stores, restaurants, hotels, and other places where food is manufactured, handled, stored, sold, or offered for sale, and for the medical inspection of persons employed therein. * * *”

Your specific inquiry is as to the existence of any provisions of law whereby violations of said rules and regulations can be punished.

You direct attention to the fact that Section 4414 of the General Code, prior to the Code Revision, where it now appears in substance as Section 3707.48, Revised Code, afforded facilities for punishment of violation of such rules and regulations, but you think that the language of the revision weakened or destroyed its effect for that purpose.

Section 4414, General Code, prior to the revision, read 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 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.” (Emphasis added)

Section 3707.48, Revised Code, reads:

“No person shall violate sections 3701.01 to 3707.53, inclusive, of the Revised Code, or any order or regulation of the board of health of a general health district, made in pursuance thereof, obstruct or interfere with the execution of such order, or wilfully or illegally omit to observe such order.”

The penalty for such violation is found in Section 3707.99, Revised Code, where it is provided:

“* * *

“(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.”

It will be observed that the provision of Section 4414, General Code, above quoted, speaks of a violation of “any provision of this chapter or of any order or regulation of the board of health made in pursuance thereof.” This language would seem to limit the regulations for whose violation punishment is provided to those regulations made pursuant to the chapter in which said Section 4414, General Code, appeared, whereas the regulations under consideration in the opinions to which I shall refer, were made under authority of another chapter corresponding to Chapter 3709., Revised Code.

In the situation which now faces you, the regulation in question was made pursuant to Chapter 3709., Revised Code, whereas the provisions for punishment are contained in Chapter 3707., Revised Code.

The question therefore arises whether penalties provided for in Chapter 3707., Revised Code, can be applied to violations of regulations enacted under authority of Chapter 3709., Revised Code. I call your attention to

the fact that the Code revision does not appear to have changed this situation. Under the provision of Section 4414, General Code, *supra*, the reference was to "violation of any provision of *this chapter* or any order or regulation made in pursuance thereof." Under the revision of that section as it appears in Section 3707.48, Revised Code, the language used is "no person shall violate Sections 3707.01 to 3707.53, inclusive, of the Revised Code, etc." which sections constitute the entire chapter; so that if the legislature in making the revision had used the words "this chapter," it would have had precisely the same effect as to include all between the first and last sections of the chapter.

In Opinion No. 672, Opinions of the Attorney General for 1929, page 1010, my predecessor had substantially the same question before him as that which you here present. He was dealing with an order of the board of health made pursuant to the provisions of Section 1261-42, General Code, and looking to a section in another chapter for the penalty for violation. The opinion, as embodied in the syllabus, reads as follows:

"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 references 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."

He arrived at his conclusion by invoking the provisions of Section 1261-30, General Code (3709.36, Revised Code), which read 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 Sections 1245 et seq.) The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

He followed that quotation by this statement:

"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. (Emphasis added)

The same question was presented to the Attorney General and was the subject of Opinion No. 7185, Opinions of the Attorney General for 1944, page 583, where it was held:

“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.”

In the course of this opinion, quotation was made from Section 1261-30, General Code, which was a part of the Hughes-Griswold Acts enacted in 1919, which reorganized the entire system of boards of health for the cities and counties. After quoting Section 1261-30, General Code, *supra*, the opinion proceeds with this statement:

“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.”

Section 1261-30, General Code, above set out, now appears, in practically the same terms, as Section 3709.36, Revised Code.

Since I cannot find that the Revised Code provisions referred to have made any change in the laws which affect your problem, I am disposed to approve and follow the opinions from which I have quoted.

It is, therefore, my opinion and you are advised that the penalties set out in Section 3707.99, Revised Code, read in connection with Section 3707.48, Revised Code, will apply to violation of rules and regulations of a general health district, made under authority of Sections 3709.21 and

3709.22, Revised Code. Opinions No. 672 for 1929 and No. 7185 for 1944 approved and followed.

Respectfully,
MARK McELROY
Attorney General