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1. COUNTY BOARD OF HEALTH—JURISDICTION OVER COUNTY PROPERTY SITUATED WITHIN ITS TERRITORY.

2. STATE DEPARTMENT OF HEALTH—JURISDICTION IN MATTERS OF PUBLIC HEALTH—AND OVER STATE PROPERTY—COUNTY BOARD OF HEALTH NO POWER OVER STATE PROPERTY EXCEPT TO CARRY OUT STATE DEPARTMENT ORDERS.

3. COUNTY DISTRICT BOARD OF HEALTH—JURISDICTION OVER MUNICIPAL PROPERTY WITHIN ITS TERRITORY.

SYLLABUS:

1. The board of health of a general health district of a county in the exercise of its powers relative to public health, has jurisdiction over buildings and property belonging to the county and situated within its territory, but not when the same is located in a city which is not a part of such health district.

2. The State Department of Health alone has jurisdiction in matters relating to the public health, over buildings or other property belonging to the state, and the board of a general health district in a county has no powers or duties relative to such property located in its district, except to carry out orders of said state department.

3. The jurisdiction of a county district board of health extends to property belonging to a municipality located within the territory of such district.

Columbus, Ohio, November 26, 1956

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

> "We have been asked by the Franklin County District Board of Health various questions which are set forth below. We have been unable to determine the answers from our research into this field. Since the questions concern the health regulations of state owned buildings as well as municipally owned property located in a different county, we have deemed it best to ask your opinion in this matter.
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> "The following questions were presented to us:
>
> "What is the jurisdiction of the Franklin County District Board of Health regarding health inspection, licenses, and other jurisdictional powers over buildings owned by the county but physically present in a municipal corporation, to wit, a city?
>
> "Who has the jurisdiction from the health district standpoint over State of Ohio owned properties whether located in a city or in the county?
>
> "Who has the jurisdiction over city owned property located both within our county and without our county?"

I have no definite information as to the portion of Franklin County which is included within the Franklin County Health District. I am informed that the City of Columbus is not included. For the purpose of this opinion, it may be assumed that the rest of the county constitutes the area and jurisdiction of the county district board of health.

As to each of your questions, it appears to me that whatever powers of regulation the district board of health has, are confined to the territory over which they have jurisdiction. In other words they have no extra-territorial jurisdiction.

1. Your first question relates to the jurisdiction of the Franklin County District Board of Health over buildings owned by the county but located in a municipal corporation, to wit, a city. Plainly, if the property is located in a city which has its own health board independent of

the county, the county board has no jurisdiction whatsoever. Assuming that there is a city forming part of the county district, I cannot see that there could be any different rule applied to county property located therein than would apply to county property located in the unincorporated portion of the county.

This brings me to what I consider the essential part of your question viz., what jurisdiction does the county board of health have regarding health inspection licenses and other powers over buildings owned by the county? It is clear that a county is in the eyes of the law only an agency or instrumentality set up by the state for the purpose of assisting the state in matters of local administration. The recognized rule is well stated in 14 Ohio Jurisprudence 2d, page 203, as follows:

> "Generally speaking, the function of the county is to serve as an agency or instrumentality of the state for purposes of political organization and local administration, through which the legislature may perform its duties in this regard more understandingly, efficiently, and conveniently than it could if acting directly. As such agency, the county is a creature in the hands of its creator, subject to be molded and fashioned as the ever-varying exigencies of the state may require. Except as restricted by the state Constitution, the power of the legislature, through which the sovereignty of the state is represented and exercised, over counties, is supreme, and that body may exercise plenary power with reference to county affairs, county property, and county funds. Counties, therefore, possess only such powers and privileges as may be delegated to or conferred upon them by statute. These powers and privileges must be strictly construed, and may, in general, be modified or taken away."

As far as I can discover, the county possesses none of the elements of sovereignty. The legislature has not seen fit to commit to it any authority or power as to health administration. The health of the public is regarded not as a matter of local concern, but rather of statewide concern, and both the state department of health and the local boards of health receive their authority directly from the state.

The right of the legislature to impose restrictions and duties upon the political subdivisions, including cities, rests upon the ground that public health is a matter of state wide, not local concern. 20 Ohio Jurisprudence, 552; State Board of Health v. Greenville, 86 Ohio St., 1; State ex rel. Construction Company v. Dean, 95 Ohio St. 108.

In the Greenville case supra, the issue was the constitutionality of a statute authorizing the state board of health to force a municipality to install a sewage disposal plant. The court in sustaining the law said at page 30 of the opinion:

> "* * * *The sanitary condition existing in any one city of the state is of vast importance to all the people of the state, for if one city is permitted to maintain unsanitary conditions that will breed contagious and infectious diseases, its business and social relation with all other parts of the state will necessarily expose other citizens to the same diseases.* With the wisdom or folly of withholding from the local authorities final discretion over these matters, we are not concerned. It is beyond question the right of the general assembly to do so, and the court need not, and ought not to, inquire what motives moved it in withholding such power." (Emphasis added.)

The powers of district boards of health emanate from the state in like manner, and are based upon the same consideration, viz., the health of the people of the state. The Supreme Court, in State ex rel. Cuyahoga Heights v. Zangerle, 103 Ohio St., 566, was considering the Hughes Act, 108 O. L., 236, and the Griswold Act, 108 O. L., 1085, by which the local health districts were established, and it was held:

> "1. The general assembly in the exercise of the legislative power conferred by the constitution has authority to enact general laws prescribing health, sanitary and similar regulations effective throughout the state; and to provide such reasonable classifications therein as may be deemed necessary to accomplish the object sought.
>
> "2. The peace, morals, health and safety of the people are a matter of concern to the state, and when the state has enacted general laws providing sanitary and similar regulations effective throughout the state the different subdivisions of the government may be required to contribute to the carrying out of the legislation."

These laws give to the local boards of health broad powers, including the power to "abate and remove all nuisances within its jurisdiction." Section 3707.01 Revised Code. Such board has the further power granted by Section 3709.21 Revised Code, as follows:

> "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 nui-

> sances. Such board may require that no human, animal, or household wastes from sanitary installations within the district be discharged into a storm sewer, open ditch, or watercourse without a permit therefor having been secured from the board under such terms as the board requires. * * *."

If the county commissioners should allow conditions in a county building to become highly unsanitary and a menace to the public health, or sewage wastes from such building to be discharged into an open ditch or upon a public highway, is it possible that the district board of health would be powerless to compel them to remedy such condition or abate such nuisance? Even if the board of health could not revert to the criminal penalties prescribed by the law, they could certainly have the right to the aid of the courts, by way of injunctive relief.

I can see no reason, therefore, why the jurisdiction of a district board of health should not extend as well to buildings and properties owned by the county situated within its jurisdiction as well as to properties owned by private individuals and corporations.

2. Your second question relates to the jurisdiction of a health district over property owned by the State of Ohio, whether located in a city or in the county. Again, I raise the distinction that the county health district has jurisdiction only over properties located within its district and under its jurisdiction. Again, I assert that it makes no difference whether the property is located within a city or within the unincorporated territory of a village so long as it is within the jurisdiction of the health district.

Accordingly, I take the meaning of your question to be, whether or not a local health district has any jurisdiction over property belonging to the State of Ohio. On that proposition I call your attention to Opinion No. 1921, Opinions of the Attorney General for 1940, page 222, where it was held:

> "2. It is the duty of the State Department of Health to adopt rules and regulations governing the installation of plumbing and sanitary equipment in buildings located on state owned property, and to see that such rules and regulations are followed.
>
> "7. Local district boards of health and officials have no general jurisdiction over state owned property in their respective health districts, and no duties with respect to public health service or sanitary and quarantine regulations on or within such property other than to enforce, when called upon, the rules, regulations and orders with respect to public health service, sanitation and quarantine adopted by the State Department of Health."

In the course of this opinion, reference was made to Opinion No. 1355, Opinions of the Attorney General for 1933, page 1214, the syllabus of which is as follows:

> "Neither local district boards of health nor local health commissioners have any general jurisdiction over state owned property in their political subdivision."

This quotation was followed by the following comment:

> "The above 1933 opinion is predicated upon the well established principle of law that the state is not bound by general regulatory provisions contained in statutes adopted in pursuance of the state's police power unless it is expressly so provided. This rule has been uniformly followed in Ohio, and quite generally elsewhere."

Citing State ex rel. v. Capellar, 39 Ohio State, 207; State ex rel. Jones v. Brown, Secretary of State, 112 Ohio St., 590, and other cases.

3. Your third question reads as follows:

> "Who has the jurisdiction over city owned property located both within the county and without our county?"

Bearing in mind what has been stated above as to extra-territorial jurisdiction, it is obvious that no county district board of health has any jurisdiction over any property outside of its county. Limiting the question to property located within the jurisdiction of the board of health, the question arises whether such jurisdiction exists over property owned by a city. As to that, I see no reason why the same conclusion which I have expressed in regard to a county should not apply equally to a city or village. I recognize the broad powers of home rule given to municipalities by Article XVIII of the Constitution. Section 3 of that article provides:

> "Municipalities shall have authority to exercise all powers of local self-government *and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.*" (Emphasis added.)

In the case of State ex rel. v. Zangerle, supra, the court in its opinion referred to the above provision of the constitution, and said:

> "Concerning the term 'general laws' it was said in Fitzgerald v. City of Cleveland, 88 Ohio St., 338, at page 359: 'The general laws (as used in Section 3, Article XVIII) referred to are obviously such as relate to police, sanitary and other similar

> regulations, and which apply uniformly throughout the state. *They involve the concern of the* state, for the peace, health and safety of all of its people, wholly separate and distinct from, and without reference to, any of the political subdivisions'."
>
> (Emphasis added.)

In the case of Bucyrus v. Department of Health, 120 Ohio St., 426, the court held:

> "The provisions of Article XVIII of the Constitution of Ohio do not deprive the state of any sovereignty over municipalities in respect to sanitation for the promotion or preservation of the public health which it elects to exercise by general laws."

The above and other authorities were extensively reviewed in Opinion No. 5564, Opinions of the Attorney General for 1942, page 759, in which it was held:

> "3. The council of a village has concurrent jurisdiction with the board of health of a general health district in the enactment of regulations affecting sanitation and the public health, including the regulation of plumbing, but such ordinances, to the extent that they are inconsistent with the regulations of such general health district, will be invalid."

While that opinion was not directly on the question here at issue, yet it reflects the principles laid down by the decisions to which I have just referred, namely, that the laws of the state relating to health matters and the powers of boards of health, are superior to any regulations or restrictions which a municipality might seek to impose, and, in my opinion strengthens the conclusion that such health regulations may be enforced even with respect to municipally owned property.

I have already called attention to the principle well established, that local boards of health have no jurisdiction over state owned buildings because the state is not bound by regulations contained in statutes unless it is expressly so provided. The converse of that proposition is that buildings owned by political subdivisions enjoy no such immunity, and are subject to regulations based on the public health, made or authorized by the legislature.

Accordingly, in specific answer to the questions submitted, it is my opinion:

1. The board of health of a general health district of a county, in the exercise of its powers relative to public health, has jurisdiction over

buildings and property belonging to the county and situated within its territory, but not when the same is located in a city which is not a part of such health district.

2. The State Department of Health alone has jurisdiction in matters relating to the public health, over buildings or other property belonging to the state, and the board of a general health district in a county has no powers or duties relative to such property located in its district, except to carry out orders of said state department.

3. The jurisdiction of a county district board of health extends to property belonging to a municipality located within the territory of such district.

Respectfully,
C. WILLIAM O'NEILL
Attorney General