

7600-6, *supra*, will not be operative since no mandatory duty to act will be imposed on a county board of education, and therefore no occasion will arise whereby it will be mandatory for the director of education to make a survey and adopt a plan of organization because of failure of the county board of education to act. The provisions of Section 7600-6, *supra*, expire after the year 1938, by virtue of the provisions of the section itself.

Therefore, in specific answer to your questions it is my opinion that Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5 and 7600-7, General Code, are not void after January 1, 1939; that after the year 1938, a county board of education may adopt a plan of school district organization by changing or modifying its last plan of organization, as provided for in Section 7600-8, General Code, if it strictly follows the procedure set forth in Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5 and 7600-7, General Code.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3435.

MILK SANITATION CODE—PUBLIC HEALTH SERVICE—  
STANDARD MILK ORDINANCE AND CODE—UNITED  
STATES TREASURY DEPARTMENT—UNITED STATES  
DEPARTMENT OF AGRICULTURE — ORDERS, REGU-  
LATIONS BY BOARD OF HEALTH—PUBLICATION IN  
ENTIRETY, NOT BY TITLE ONLY—EMERGENCY MEAS-  
URES—IMMEDIATELY EFFECTIVE, NOT REQUIRED  
TO BE PUBLISHED—POWERS—CITY BOARD OF  
HEALTH—GENERAL HEALTH DISTRICT.

*SYLLABUS:*

1. *Orders or regulations adopted by a board of health of a city or of a general health district intended for the general public are required to be published in their entirety and not by title only.*
2. *Such orders and regulations when adopted as emergency measures become immediately effective and are not required to be published.*
3. *The board of health of a city or general health district may adopt orders and regulations by reference to the United States Public*

*Health Service Milk Ordinance and Code and provide that the sale of milk products shall be regulated in accordance with the terms of such code.*

COLUMBUS, OHIO, December 20, 1938.

HON. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR: This will acknowledge your letter of recent date concerning the adoption of a milk sanitation code known as the Public Health Service Standard Milk Ordinance and Code by local health districts in this state.

The aforementioned code which is generally recognized as embodying the best principles of milk sanitation is approved by the United States Department of Agriculture and is being enforced in several hundred communities in the United States. This code is usually adopted by local health districts in this state as a regulation of a local board of health under the provisions of Sections 4413 and 1261-42, General Code, and when so adopted, the regulations, including the entire code, are published in local newspapers. In order to eliminate or materially reduce the cost of publication which you state is prohibitive, several proposals are suggested by you for the adoption of such codes. You now request my opinion regarding the legality of such proposals.

Before considering the specific plans suggested by you, it is advisable to refer to those sections of the General Code under which you state the code is adopted as a regulation by the local boards of health.

Section 4413, General Code, relating to orders and regulations of city boards of health, provides as follows:

“The board of health of a city may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. Orders and regulations not for the government of the board, but intended for the general public shall be adopted, advertised, recorded and certified as are ordinances of municipalities and the record thereof shall be given, in all courts of the state, the same force and effect as is given such ordinances, provided, however, that in cases of emergency caused by epidemic of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be

emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording and certifying.”

Section 1261-42, General Code, relating to orders and regulations of general health districts, is as follows:

“The board of health of a general health district may make such orders and regulations as it deems 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 municipalities and record thereof shall be given in all courts of the state the same force and effect as is given such ordinances, but the advertisements of such orders and regulations shall be by publication in one newspaper published and of general circulation within the general health district. Publication shall be made once a week for two consecutive weeks and such orders and regulations shall take effect and be in force ten days from date of first publication. Provided, however, that in cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording or certifying.”

A reading of the foregoing sections reveals that both the board of health of a city health district and the board of health of a general health district, when making orders or regulations intended for the general public, are required to adopt and publish such orders and regulations in the case of city health districts in the same manner as are ordinances of municipalities and in the case of general health districts as provided in Section 1261-42, General Code.

This brings me to a consideration of one of the proposals suggested by you, namely, that local boards of health adopt the code in full as a regulation of such board and publish the code by title only, with a statement that complete copies of the code are available through local health departments. In order to determine whether or not regulations of a local health board may be published in the manner proposed by you as above mentioned, it is necessary to

determine whether Sections 4228 and 4229, General Code, relating to the mode of publication of ordinances of municipalities, permit publication by title only. It is not necessary for the purposes of this opinion to quote the provisions of the foregoing sections of the General Code. Suffice it to say that those sections provide in language similar to that found in Section 1261-42, General Code, for the publication of ordinances of municipalities. In Opinions of the Attorney General for 1933, Vol. I, page 347, Sections 4428 and 4429, General Code, were considered and it was held as disclosed by the syllabus as follows:

“Ordinances of a general nature, except in municipalities organized under Section 7, Article XVIII of the Ohio Constitution which has specifically provided otherwise by charter, must be published in their entirety and where published by caption only do not meet with the requirements of Section 4228, of the General Code.”

In view of the foregoing opinion, it would seem that the proposal hereinabove considered may not be adopted by a local board of health as such proposal permits a board of health to publish a code embodied in a regulation adopted by such board by title only whereas such regulations must be published in their entirety.

Your second proposal provides for the enactment of the Public Health Service Milk Standard Ordinance and Code as an emergency measure. When so enacted the provisions of both Sections 4413 and 1261-42, supra, do not require publication, and regulations enacted as emergency measures become effective immediately. In this connection you ask for a legal definition of the term “emergency” as applied in the foregoing provisions of the General Code. The term “emergency” is defined in Bouvier’s Law Dictionary as “An unforeseen occurrence or condition.” It is also necessary to define the term “epidemic” as used in Sections 4413 and 1261-42, General Code, in order to determine the conditions under which a regulation may be enacted by a local board of health as an emergency measure. The term “epidemic” is defined in Webster’s Twentieth Century Dictionary as “1. A disease temporarily prevalent in a locality; 2. Anything that affects great numbers or is generally prevalent.” Considering the foregoing definitions of the terms used in the sections of the General Code involved in this opinion and applying same to the terms as used in such sections, it would seem that a local board of health may adopt an order or regulation as an emergency measure in cases of unforeseen occurrences caused by contagious or infectious diseases, conditions or events endangering the public health,

which conditions are generally prevalent and affect a great number of people in a community. I do not believe, however, that the proposal here considered is a practical one for the reason that if the milk sanitation code is worthy of adoption by regulation of a local board of health, the adoption of such code should not be dependent upon the existence of an emergency in a particular locality. Furthermore, enforcement would be made more difficult when the code is adopted as an emergency measure and consequently not published by reason of the fact that the people residing in the locality wherein such code is adopted would not be as familiar with the contents of such code as they would be if the code were published in a local newspaper.

Your last proposal suggests that a local board of health adopt the code by reference in a regulation of such board. Without quoting the form of regulation prescribed by the Public Health Service of the United States Treasury Department which may be found on page V of the publication embodying the code, it would seem that the question resolves itself into a determination of whether or not a board may adopt an order or regulation by reference. This method of legislation has been recognized by the courts of this state as is evidenced in the case of *State, ex rel, v. Gongwer*, 114 O. S. 642. The court in referring to legislation by reference, said at page 650:

“It is a class of legislation so generally recognized in the various state jurisdictions, and in the jurisdiction of the United States, that we think that the rule may safely be stated that such legislation is effective wherever it is not by constitutional provision expressly prohibited. At any rate, in Ohio it is a recognized mode of legislation.”

In the case of *State vs. Hutchinson*, 56 O. S. 852, the court considered Section 5777, General Code, which, when adopted, referred to the United States Pharmacopoeia and said that such pharmacopoeia is adopted as an authoritative compilation comprising accepted and known articles of drugs with descriptions and standards.

In view of the foregoing, it is my opinion that a local board of health may adopt a regulation in the form prescribed by the Public Health Service of the United States Treasury Department, found on page V of the publication embodying the code and in such regulation provide that the sale of all milk and milk products shall be regulated

in accordance with the terms of the United States Public Health Service Milk Ordinance and Code.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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3436.

BOARD OF EDUCATION—JURISDICTION OR AUTHORITY  
OVER CHILD—COMPULSORY SCHOOL AGE—DATE OF  
ENROLLMENT NOT DATE OF ENUMERATION CER-  
TIFICATION — CONDITIONS OR REQUIREMENTS,  
RULES AND REGULATIONS—PRIVILEGE OF PUBLIC  
SCHOOL ATTENDANCE.

*SYLLABUS:*

*A board of education acquires jurisdiction or authority over a child of compulsory school age about to enter school from the date of the enrollment and not from the date of the enumeration certification, for the purpose of requiring such child to perform certain conditions or meet certain requirements that the board of education may have duly adopted in its rules and regulations as the conditions of the privilege of attending the public school.*

COLUMBUS, OHIO, December 20, 1938.

DR. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication which reads as follows:

“Will you kindly give me at the earliest date possible your opinion as to whether school authorities have jurisdiction over children about to enter school from the date of the Enumeration Certification or from the date of enrollment?”

I am enclosing also a copy of the letter received by the clerks and members of the Board of Education in Miami County in which the Prosecuting Attorney of that county gives them his interpretation of the laws relative thereto. I am giving you this not in order to assist you in arriving at a decision, but in order to give you the picture of the argument between the boards of health, the school authorities and the local medical profession.”