

be filled by the judges of said court, by appointment, until his successor is elected and qualified according to law."

Article XVII, section 2, of the Ohio Constitution, provides in part that:

"* * * the term of office of all elective county, township, municipal and school officers shall be such even number of years not exceeding four (4) years as may be so prescribed. * * *

All vacancies in other elective offices (other than state officers or members of the General Assembly) shall be filled for the unexpired term in such manner as may be prescribed by law."

Section 10, General Code, reads as follows:

"When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified. Unless otherwise provided by law, such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred. This section shall not be construed to postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, nor to affect the official term, or the time for the commencement thereof, of any person elected to such office before the occurrence of such vacancy."

You will note that section 1579-316, supra, provides that a vacancy in the office of clerk of the municipal court of Toledo shall be filled by appointment and that the appointee shall hold the office until his successor is elected and qualified according to law. I have examined the statutes of Ohio and the charter of the City of Toledo, and I am unable to find any section containing provisions applicable to the election of a successor to an appointee for the office of clerk of the municipal court of Toledo other than the general provisions contained in section 10, supra. This section provides when and for what length of time such a successor to an office shall be elected and in the absence of any specific provision of law to the contrary it will govern in the instant case.

In Opinion No. 105 dated February 26, 1927, a copy of which I am herein enclosing, this department construed and interpreted section 10, supra.

Following the reasoning and the conclusions of the above opinion and applying that which is pertinent to the instant question, I am of the opinion that a successor to Mr. W. M. should be elected for the unexpired term at the November municipal election of 1927.

Respectfully,

EDWARD C. TURNER,
Attorney General.

559.

STATE BOARD OF HEALTH—SECTION 1241, GENERAL CODE, CONSTRUED
—AUTHORITY TO MAKE AND ENFORCE REASONABLE RULES AND
REGULATIONS FOR THE OPERATION OF STATE LABORATORY.

SYLLABUS:

1. *The state board of health, having under authority of section 1241, General Code, the power to establish and maintain a laboratory for the diagnosis of contagious and in-*

fectious diseases, has as a necessary incident to such power the right to make and enforce reasonable rules and regulations conducive to the efficient operation of such laboratory.

2. In the exercise of such power the state board of health may limit the service of such laboratory to physicians and surgeons licensed to practice in Ohio, but may not refuse to furnish such service to certain physicians and surgeons because of practice or acts indulged in by such physicians which practice or acts are unethical as measured by the standards of the state board of health or any academy of medicine, unless such practice or acts are such as prevent the laboratory from accomplishing the objects of its creation.

COLUMBUS, OHIO, June 2, 1927.

HON. JOHN E. MONGER, M. D., *Director of Health, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication reading as follows:

“Under the authority of section 1241 of the General Code the State Board of Health in 1898 established a laboratory to make the examinations provided for in that section. Specimens to be examined to determine a diagnosis of contagious and infectious diseases are received from physicians throughout the state. Hitherto no inquiry has been made by the department of health in regard to physicians submitting specimens to the laboratory except as regards their licensure to practice medicine in Ohio. The department is now asked by an Academy of Medicine:

‘Will you take immediate action and withdraw the Wasserman service from the unethical physicians in-----if we furnish you with a list of these men and assure you the moral backing of the----- Academy of Medicine?’

By way of explanation, I will say that Wasserman service is the examination of specimens of blood to determine the existence or non-existence of syphilis in the person from whom the blood was taken.

I shall be glad to have your opinion as to whether or not this department has the authority to determine the ethical or unethical standards of physicians who submit specimens to our laboratory, or to accept the opinion of the Academy of Medicine or other organized group of medical practitioners as to the ethical or unethical standards of physicians.”

Section 1241, General Code, provides:

“The state board of health may establish and maintain a chemical and bacteriological laboratory for the examination of public water supplies, and the effluent of sewage purification works, for the diagnosis of diptheria, typhoid fever, hydrophobia, glanders and such other diseases as it deems necessary, and for the examination of food suspected to be the cause of disease. The board shall examine and report each year the condition of all public water supplies.”

Section 1241, *supra*, does not contain any conditions or limitations upon the power of the state board of health in the operation of the laboratory for the diagnosis of diseases. The board may, therefore, make and enforce its own rules and regulations for the operation of the laboratory, limited only by the requirement that they be reasonable and consistent with the purpose for which the power to establish such laboratory was conferred, to-wit, the protection and conservation of the health of the general public. The board may undoubtedly provide that only specimens, cultures, etc., prepared and submitted by physicians and surgeons licensed to practice in Ohio

will be examined. Such a regulation could be sustained on the theory the proper diagnosis of diseases requires not only great care and scientific skill in the examination of specimens submitted, but also in the taking and preparation of specimens, culture, etc., for such examination, and that the board may determine that only such persons understand the preparation and handling of sterile instruments and media and the proper taking and preparation of specimens and cultures for examination.

However, having selected a class or classes of persons to whom the facilities and service of the laboratory shall be available, I do not believe it to be within the province of the board to go further and select certain members of such class or classes and refuse to furnish service to such persons for reasons which would have no bearing upon the efficient operation of the laboratory in a scientific manner. In other words, the board could not arbitrarily adopt a regulation which would close the laboratory to a physician or surgeon because of his indulgence in some acts or practice which, although unethical as measured by the standard of a particular academy of medicine would not in any wise detract from or interfere with his skill as a physician or surgeon or prevent him from submitting proper specimens which the laboratory could examine and from which a proper diagnosis could be made.

Of course if the unethical practice indulged in by a particular physician or surgeon is such that it interferes with the scientific operation of the laboratory such practice may be a proper subject of regulation by the board, not because it is unethical, but because it prevents the laboratory from accomplishing the objects of its creation.

The laws of Ohio do not recognize ethical or unethical practice of medicine or surgery except in so far as the same has been incorporated in the statutes providing for the granting of licenses to practice to physicians and surgeons and the revocation or suspension of such licenses and regulating the practice of medicine in Ohio generally.

For example, Section 1275, General Code, sets out the grounds upon which a certificate to practice medicine or surgery may be refused, suspended or revoked. That section provides as follows:

“The state medical board may refuse to grant a certificate to a person guilty of fraud in passing the examination, or at any time guilty of felony or gross immorality, grossly unprofessional or dishonest conduct, or addicted to the liquor or drug habit to such a degree as to render him unfit to practice medicine or surgery. The words ‘grossly unprofessional or dishonest conduct’ as used in this section are hereby declared to mean:

First: The employing of any capper, solicitor or drummer for the purpose of securing patients, or subsidizing any hotel or boarding house with like purpose, or the obtaining of any fee on the assurance that an incurable disease can be cured.

Second: The willful betrayal of a professional secret. But a physician, knowing that one of the parties to a contemplated marriage has a venereal disease, and so informing the other party to such contemplated marriage, or the parent, brother, or guardian of such other party, shall not be held to answer for betrayal of a professional secret nor shall such physician be liable in damages for truthfully giving such information to such other party, or the parent, brother or guardian of such other party.

Third: All advertising of medical practice in which extravagantly worded statements intended, or having a tendency to deceive and defraud the public are made, or where specific mention is made in such advertisements of tuberculosis, consumption, cancer, Bright's disease, kidney disease, diabetes, or of venereal diseases or diseases of the genito-urinary organs.

Fourth: Having professional connection with, or lending one's name to an illegal practitioner of medicine.

Fifth: Any division of fees or charges, or any agreement or arrangement

to share the fees or charges made by any physician or surgeon with any other physician or surgeon, or with any other person.

Upon notice and hearing, the board, by a vote of not less than five members, may revoke or suspend a certificate for like cause or causes."

If any of the physicians which the _____ Academy of Medicine classes as unethical are indulging in practice or acts which violate the provisions of Section 1275, supra, the proper procedure would be to call the alleged violations to the attention of the State Medical Board for proper action thereon by said board. If the medical board should, pursuant to proper proceedings, revoke or suspend the certificate of a physician classes as unethical by the _____ Academy of Medicine, the State Board of Health having adopted a regulation limiting laboratory service to licensed physicians and surgeons could properly refuse to furnish laboratory service to the persons whose certificate had been revoked or suspended, but such refusal would have to be based on the fact that the persons did not come within the class of persons (physicians and surgeons licensed to practice in Ohio) to whom the facilities and service of the laboratory are available rather than because of any unethical practice indulged in by such physicians and surgeons.

Clearly the State Board of Health could not accept the opinion of any academy of medicine or any other organized group of medical practitioners as to the ethical or unethical standards of any physician.

For the reasons above stated, I am of the opinion that the State Board of Health, having under authority of Section 1241, General Code, the power to establish and maintain a laboratory for the diagnosis of contagious and infectious diseases, has as a necessary incident to such power the right to make and enforce reasonable rules and regulations conducive to the efficient operation of such laboratory. That in making such rules and regulations the board may select a class or classes of persons, such as physicians and surgeons licensed to practice in Ohio, to whom the service of such laboratory shall be available on the theory that only such persons understand the handling of sterile instruments and media and the proper taking and preparation of specimens and cultures for examination. I am further of the opinion that said board may not refuse to furnish laboratory service to certain physicians and surgeons because of some practice or acts indulged in by such physicians and surgeons, which practices or acts are unethical as measured by the standards of the State Board of Health or any academy of medicine, unless such practice or acts are such as prevent the laboratory from accomplishing the objects of its creation.

Respectfully,

EDWARD C. TURNER,

Attorney General.

560.

COUNTY COMMISSIONERS—COMPENSATION FOR LIVE STOCK INJURED OR KILLED BY DOG—SECTIONS 5840, ET SEQ., CONSTRUED.

SYLLABUS:

1. *Under the provisions of Sections 5840, et seq., of the General Code, an owner of live stock injured or killed by a dog belonging to such owner is not entitled to receive compensation from the county funds for the injury to such live stock.*

2. *Where the owner of live stock injured or killed by a dog not belonging to such owner, presents a claim to the township trustees who hear such claim, make an allowance*