

held if justified by public necessity and by the prevalence of smallpox in the community.

In *Cincinnati vs. Allison*, 12 O. D. N. P. 376, it was held that a board of health may require all known women of immorality to submit to a physical examination.

There are other numerous cases in which certain powers of boards of health have been upheld, such as the confiscation of milk under certain conditions, and regulation of the sale thereof. Likewise, the power of quarantine and the establishment of pest houses, etc., has been upheld.

From the foregoing, it would appear that it is a question of fact in each case to be determined in the first instance by the board of health as to what measures are necessary to properly protect the public against the spreading of disease. As the courts have said, the extent of the police power in a given case is measured only by the needs of the community. If the condition which you describe is such that only the contemplated action will properly protect the public against the spread of this dangerous disease, then, of course, in view of the holdings heretofore referred to, such an order will be upheld.

On the other hand, if such an order is unnecessary, and should amount to an abuse of discretion on the part of the board of health, then, of course, the courts would set the same aside in the event that the question should be judicially raised. It is generally known that rabies is a disease which has its origin in most cases, if not all, in dogs, and is transmitted by them to other animals and human beings. In view of the known powers of boards of health to quarantine human beings and control their associations in order to prevent the spread of disease, it would seem a much less exercise of the police power to regulate the movements of dogs, when the same is necessary in order to prevent the spread of disease.

However, as above indicated, it is not within the power of this department to specifically state in what instances such a power may be exercised; neither is it within its power to state that the action contemplated by the board of health is a reasonable exercise of the power. This is a question of fact to be determined in the first instance by the board of health, and the determination of the board of health will not be disturbed unless it should be found by the courts to be an abuse of discretion.

Respectfully,
C. C. CRABBE,
Attorney General.

2309.

ELECTIONS—UNDER PROVISIONS OF SECTION 3396 G. C. ALL VOTES MUST BE CONSIDERED IN DETERMINING A MAJORITY OF THE VOTES CAST.

SYLLABUS:

Where an election was held to vote upon a town hall, in counting the ballots, under the provisions of section 3396 G. C., all the votes must be considered in determining a majority of the votes cast, in order to ascertain the result of the election.

COLUMBUS, OHIO, March 23, 1925.

HON. HENRY C. ASHCRAFT, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication, which is as follows:

"The township trustees of Licking township, Licking county, Ohio, submitted the question to the voters of said township at the November election, 1924, as to whether or not the town hall should be improved and enlarged at a cost not to exceed \$2,000.00.

"The town hall is situated in Jacksontown, unincorporated, Licking township, Licking county, Ohio, and is owned and controlled by the township. There were 384 ballots cast at the general election, November, 1924. The vote on the town hall stood as follows:

"183 votes cast in favor of the town hall.

"149 votes cast against the town hall.

"43 blanks.

"9 unintelligible votes.

"Section 3396 G. C. provides that if a majority of all the ballots cast at the election are in the affirmative, the trustees shall levy the necessary tax, etc.

"Under 91 Ohio State, page 28, the city of Wellsville, et al., vs. Connor, it is stated that all the votes that were cast must be considered. This decision is under section 3939. In face of the above decision I would like to know what is the result of the above vote upon the question submitted."

You request information as to the result of an election under the provisions of section 3396 G. C., at which election there were 384 ballots cast, of which 183 were in favor, 149 against, 43 blank and 9 unintelligible votes.

Your inquiry raises the question as to the interpretation of the words used in section 3396 G. C. The provisions of this section are in part as follows:

"If a majority of all the ballots cast at the election are in the affirmative, the trustees shall levy the necessary taxes. * * *"

The interpretation of section 3947 G. C. is also involved in the interpretation of this statute. The provisions of section 3947 are as follows:

"If two-thirds of the voters voting at such election upon the question of issuing the bonds vote in favor thereof, the bonds shall be issued. * * *"

The supreme court of Ohio has had interpretations of this statute before it in the cases of Enyart vs. Trustees, 25 O. S., page 618, and Wellsville vs. Connor, 91 O. S., page 28.

In the case of Enyart, supra, the court held:

"Said trustees shall not cause said levy to be made until a majority of the electors of said township at some regular election shall vote in favor of said levy."

In the opinion of the court, the following is found:

"In this case the entire number of votes cast for president and vice-president furnish the basis by which it is to be determined whether or not the levy was authorized. The record shows that, although the number of votes in favor of levying a tax was a majority of the votes cast on that question, they were not a majority of all the votes for electors of president and vice-president, and hence the levy was never authorized."

It is disclosed from this case that section 3396 G. C. formerly read:

“When a majority of the electors of said township at some regular election shall vote in favor. * * *”

Said section is now amended to read:

“If a majority of all the votes cast at the election are in the affirmative. * * *”

By this amendment the legislature may have intended to amend for the purpose of providing consideration only of the votes submitted on the proposition, rather than upon the number of electors voting for president and vice-president as found to be the case by the court, as above cited, or it may have intended consideration of all the votes cast on the question involved.

In the case of *Wellsville vs. Connor*, 91 O. S., page 28, the court has evidently taken into consideration the interpretation of section 3396 G. C. The second syllabus of this case reads as follows:

“Where a voter at an election duly held does not by his ballot express his choice for the office to be filled, or on a question submitted to the electors, his ballot should not be counted for such office or on the question. But if it is required by law that a majority or any certain proportion of the votes cast at the election should be in favor of a proposition in order that it should carry, then all the votes cast at the election, including blank and unintelligent ballots must be considered.”

The latter part of this syllabus must have reference to section 3396 G. C., and with this interpretation, it will require a majority of all the votes cast at the election. This conclusion is further emphasized in the opinion of the court on page 33, in which emphasis is given to the provision of the statute which expresses that the vote shall be upon the *question of issuing the bonds*.

It is therefore concluded that where the statute requires a determination from the votes cast without using a further expression *upon the question*, it must be inferred that all votes cast must be reckoned in determining the result of the election.

Using this interpretation, it is believed that in your case it would have required 193 votes in favor of the Town Hall to have given a majority in favor thereof, as contemplated by section 3396 G. C.

Respectfully,
C. C. CRABBE,
Attorney General.

2310.

AUTHORITY OF JUDGE OF JUVENILE COURT UNDER PROVISIONS
OF SECTION 8034-1 G. C.—SECTION 1642-1 G. C. CONSTRUED.

SYLLABUS:

When orders made in the common pleas court or probate court as to the care and custody of minor children are certified to the juvenile court, under the pro-