

2369.

HEALTH, DEPARTMENT OF — NO AUTHORITY TO ESTABLISH BY REGULATIONS OF PUBLIC HEALTH COUNCIL, SYSTEM OF REGISTERING BIRTHS AND DEATHS OCCURRING PRIOR TO VITAL STATISTICS REGISTRATION LAW.

SYLLABUS:

The Department of Health may not, by means of regulations adopted by the Public Health Council, establish and maintain a system of registra-

tion of births and deaths occurring in this state prior to the effective date of the Vital Statistics Registration Law.

Columbus, Ohio, June 7, 1940.

Honorable R. H. Markwith, Director, Department of Health,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your communication of May 15, 1940, which reads as follows:

"Under the provisions of G. C. 197 to 234, inclusive (99 v. 296), there was established a central bureau of vital statistics to be under the charge and general supervision of the secretary of state. There was also provided a state registrar of vital statistics (G. C. 199; repealed 109 v. 132) who had direct charge of the operation of the bureau of vital statistics. In the enactment of G. C. 154-43 (109 v. 120), there was transferred to the Department of Health the powers and duties 'vested in the secretary of state and the state registrar of vital statistics with respect to the registration of vital statistics as provided in sections 197 to 234, both inclusive, of the General Code'.

The act referred to made ample provision for the registration of current births and deaths, but no direct provision is made for the registration of births and deaths occurring before the effective date of the act, December 20, 1908. For legal purposes, passports, etc., the Department of Health has received many requests to register and create a public record of births or deaths occurring before December 20, 1908, in order that a certified copy of the record be obtainable for such uses as may be required. Such records as were made in the probate judge's office, from information secured by assessors, are incomplete and inaccurate. In some counties the records have been destroyed.

I shall be glad to have your opinion as to the authority of the Department of Health, by suitable regulations adopted by the Public Health Council, to establish and maintain a system of registration of births and deaths occurring in the State of Ohio prior to the effective date of the vital statistics registration law."

The question you present for answer requires an examination of the statutes fixing the jurisdiction of the Department of Health and the statutes creating and giving authority to the Public Health Council. By the terms of Section 1232, General Code, there is created a State Department of Health. That section confers upon the State Department of Health all the powers and duties previously had by the State Board of Health.

By Section 1237, General Code, the State Board of Health had "supervision of all matters relating to the preservation of the life and health of the people" and had "supreme authority in matters of quarantine." That section provides for the making of special orders governing the control of contagious diseases, and the same section gives to the State Board of Health certain supervisory powers over local boards of health.

By the terms of Section 154-44, General Code, as amended in House Bill No. 301, 93rd General Assembly, and effective on August 17, 1939, it is provided that the Public Health Council provided for by Section 1234, General Code, shall continue to exist in the Department of Health, and shall exercise all powers vested in it by law.

Within the structure of the laws providing for the Department of Health, it is provided under Section 1234, General Code, as amended by House Bill No. 301, 93rd General Assembly, for the Public Health Council, its makeup, and its method of operation, and, under Section 1235, General Code, as amended by the same House Bill No. 301, 93rd General Assembly, are set forth the powers and duties of the Public Health Council. That section provides:

"It shall be the duty of the public health council and it shall have the power:

(a) To make and amend sanitary regulations to be of general application throughout the state. Such sanitary regulations shall be known as the sanitary code.

(b) To take evidence in appeals from the decision of the director of health in a matter relative to the approval or disapproval of plans, locations, estimates of cost or other matters coming before the director of health for official action. In the hearing of such appeals the director of health may be represented in person or by the attorney general.

(c) To conduct hearings in cases where the law requires that the state department of health shall give such hearings; to reach decisions on the evidence presented, which shall govern subsequent actions of the director of health with reference thereto;

(d) To prescribe by regulations the number and functions of divisions and bureaus and the qualifications of chiefs of divisions and bureaus within the state department of health;

(e) To enact and amend by-laws in relation to its meetings and the transaction of its business;

(f) To consider any matter relating to the preservation and

improvement of the public health and to advise the state director of health thereon with such recommendations as it may deem wise.

The public health council shall not have nor exercise executive or administrative duties."

If it is within the power of the Public Health Council to establish by regulation a system of registration of births and deaths prior to the effective date of the Vital Statistics Registration Law, it must come from the words of Section 1235, General Code, which details the powers of the Public Health Council, or it must be a power able to be of necessity implied from the powers explicitly granted by that section, for, as stated in 32 O. J. 933: " *** Public officers have only such powers as are expressly delegated them by statute and such as are necessarily implied from those so delegated."

An examination of the language of Section 1235, General Code, reveals no specific language authorizing the doing of the thing here discussed and in my opinion the registration of births and deaths in the manner contemplated is not an implied power arising of necessity from the direct powers granted by that section.

Another and further reason exists which in my opinion leads to the same conclusion. Under Article II, Section 1, Constitution of Ohio, the legislative function of this state is confided, except for the initiative and referendum, to the General Assembly. The General Assembly has by the enactment of the Vital Statistics Registration Law, Sections 197 to 234, inclusive, declared a method and policy for the registration of vital statistics which is prospective only in operation. The Legislature having made no provision for the registration of births and deaths by the Bureau of Vital Statistics prior to the effective date of the act, thereby fixed a policy of not recording births and deaths by the Bureau of Vital Statistics prior to that date. Any attempt by the Public Health Council now to provide for the registration of such matters prior to the time fixed by the Legislature, would be a change or extension of policy and hence an usurpation of the legislative function. See *State ex rel v. Park District*, 120 O. S. 465, wherein, at page 479, the rule-making power of administrative and quasi-judicial bodies is defined in the following words:

" *** While the legislature may not delegate to any other power the right to declare principles and standards and general public policy, it may delegate to other competent agencies the power to determine whether or not they will avail themselves of

the privileges conferred and also delegate to certain named executive or administrative agencies authority involving discretion in relation to the execution of the law."

In 11 Am. Jur. 892, Section 192, it is said:

"Thus the legislature has the authority to determine the public policy of the state. ***"

See also 8 O. J. 315.

Thus it appears that if the Public Health Council should by rule provide a system of registration of births and deaths, supplementing and extending the system now provided by law, it would be an assumption of legislative authority not permissible under the Constitution of this state.

It is therefore my opinion that the Department of Health may not, by means of regulations adopted by the Public Health Council, establish and maintain a system of registration of births and deaths occurring in this state prior to the effective date of the Vital Statistics Registration Law.

Respectfully,

THOMAS J. HERBERT,
Attorney General.