

In view of the fact, however, that the transcript discloses that the provisions of Section 3298-15a have not been complied with as commented upon above, I am compelled to advise you not to purchase the above bonds.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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670.

APPROVAL, BONDS OF WASHINGTON TOWNSHIP, MORROW COUNTY  
—\$567.43.

COLUMBUS, OHIO, July 25, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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671.

APPROVAL, BONDS OF TULLY TOWNSHIP, MARION COUNTY—  
\$11,207.51.

COLUMBUS, OHIO, July 25, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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672.

HEALTH BOARD—DISTRICT—ORDERS MAY REFER TO STATUTORY  
PENALTY FOR THEIR VIOLATION.

**SYLLABUS:**

*An order of a district board of health made pursuant to the provisions of Section 1261-42, General Code, intended for the general public, may contain a reference to the statutory penalty for violation of such orders, which penalty is set forth in Section 4414, General Code. If references to a penalty is made in such order, it should be so worded as to clearly indicate that the district board of health is not fixing the penalty.*

COLUMBUS, OHIO, July 26, 1929.

HON. E. B. UNVERFERTH, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Section 1261-42 of the General Code of Ohio reads 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 and certifying.'

Under this section the District Board of Health of Putnam County, Ohio, has passed an order requiring all dogs to be vaccinated against rabies. This order was passed in the attempt to restrict the spread of rabies in this county. Now the board wants to include in this order a penalty for a violation thereof. I note from a reading of this section that no provision is made for enforcement thereof, and further there is no penalty after a violation.

In examining the other sections under the health statutes providing for penalties and so forth, I find Section 4414, which reads as follows:

'Whoever violates any provision of this chapter, or any order or regulation of the board of health made in pursuance thereof, or obstructs or interferes with the execution of such order, or wilfully or illegally omits to obey such order, shall be fined not to exceed one hundred dollars or imprisoned for not to exceed ninety days, or both, but no person shall be imprisoned under this section for the first offense, and the prosecution shall always be as and for a first offense, unless the affidavit upon which the prosecution is instituted, contains the allegation that the offense is a second or repeated offense.'

In my opinion this section cannot relate back to Section 1261-42.

Section 1247, which reads as follows:

'All prosecutions and proceedings by the state board of health for the violation of a provision of this chapter which the board is required to enforce, or for the violations of any of the orders or regulations of the board, shall be instituted by its secretary on the order of the president of the board. The laws prescribing the modes of procedure, courts, practice, penalties or judgments applicable to local boards of health, shall apply to the state board of health and the violation of its rules and orders. All fines or judgments collected by the board shall be paid into the state treasury to the credit of such board.'

seems to indicate that penalties and judgments applicable to local boards of health shall also apply to the State Board of Health.

Now in view of the above quoted sections, the writer hereof desires to know whether it will be possible under Section 1261-42 for the District Board of Health of Putnam County, Ohio, to include in the above mentioned order a penalty for a violation of the same. In other words, are these sections so co-related that Section 4414 will apply to Section 1261-42? If this is not the case, kindly advise what section the District Board of Health of Putnam

County, Ohio, can use in the enforcements of any order passed under Section 1261-42.”

Section 1247, General Code, which you quote, refers to proceedings by the state board of health of prosecutions for violations of those provisions of Chapter 19, Title 3, Division 2, General Code, which the state board of health is required to enforce and has no bearing upon orders which district boards of health are required to enforce.

The provisions of the General Code relating to district boards of health are contained in this same chapter, being Sections 1261-16 to 1261-43, General Code, inclusive.

Section 1261-30, General Code, is as follows:

“The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act (G. C. Sections 1261-16 to 1261-43 and Sections 1245 et seq.). The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed.”

The powers and duties conferred and imposed by law upon the board of health of a municipality and the procedure and penalties for violation of the sanitary regulations of a board of health which are in this section expressly transferred to the district board of health are those powers, duties, procedure, etc., as contained in Sections 4404 et seq. of the General Code. Section 4414, General Code, which you quote, is therefore clearly applicable to orders and regulations made by a district board of health and intended for the general public under the provisions of Section 1261-42, General Code.

Regarding the question of including the penalty for violation of an order of the district board of health, intended for the general public, in such order, the district board has no authority to fix such penalty. However, if the district board of health desires to stipulate in such order the penalty which may be imposed for its violations, such stipulations should provide that whoever violates the order shall be fined as set forth in Section 4414, General Code, making particular reference to the statute so as to indicate that it is not the district board of health that is fixing the penalty.

In your letter you state that the district board of health of your county passed an order requiring all dogs to be vaccinated against rabies. While not directly in question, it may be well to comment thereon to the extent of calling your attention to an opinion of my predecessor contained in Opinions of the Attorney General for the year 1928, Vol. III, page 1748. In this opinion comment is made upon the broad powers conferred upon district boards of health and my predecessor held as set forth in the third branch of the syllabus, as follows:

“A district board of health, if it deems it necessary for the public health, or the prevention or restriction of disease, or the prevention, abatement or suppression of a nuisance may order the vaccination of all dogs within such district with anti-rabic serum.”

While the question of whether or not there was actually an epidemic of rabies upon which such an order was predicated, was not discussed by my predecessor, I am inclined to the view that such epidemic must actually exist before a board of

health would be authorized to order that all dogs be so vaccinated. The further question may arise as to whether or not the district board of health should pay the cost of such vaccination, or whether or not such cost should be paid by the individual owners of the dogs. However, this matter is not before me and it is accordingly not necessary to comment thereon.

Specifically answering your question, I am of the opinion that an order of a district board of health made pursuant to the provisions of Section 1261-42, General Code, intended for the general public, may contain a reference to the statutory penalty for violation of such orders, which penalty is set forth in Section 4414, General Code. If reference to a penalty is made in such order, it should be so worded as to clearly indicate that the district board of health is not fixing the penalty.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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673.

INSURANCE—RIGHTS OF VARIOUS SUBDIVISIONS OF STATE TO  
 CARRY PUBLIC LIABILITY POLICIES COVERING MOTOR VEHICLES  
 —PROPER FUND FOR PREMIUMS.

*SYLLABUS:*

1. *County commissioners and boards of education may not lawfully carry public liability and property damage insurance payable to others on account of damages growing out of the operation of motor vehicles by such boards in connection with their official duties, for the reason that when acting in such capacity they are performing a governmental function and that no liability arises under such circumstances.*
2. *By reason of the liability created by Section 3298-17 of the General Code in cases where boards of township trustees are negligent in the performance of their duties in connection with roads, such boards may lawfully protect themselves against damages by means of insurance.*
3. *Municipal officers when not acting in a proprietary capacity, such as when operating a public utility, are limited in the acquiring of such insurance in the same manner as boards of education and township trustees.*
4. *Such boards and officers may legally contract for fire or collision insurance to protect automobiles owned and operated by them from loss to the property itself.*
5. *Premiums for such insurance may properly be paid out of any fund of the subdivision operating and maintaining the same which is available for the purpose of maintenance of such vehicles.*

COLUMBUS, OHIO, July 26, 1929.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication, which reads:

“We wish to inquire relative to county commissioners, township trustees, boards of education, councils of villages and boards of affairs carrying public liability, collision and property damage insurance on motor vehicles owned by them and operated by their employes, purchased from insurance companies.