

"Reciprocity expresses the act of an interchange of favors between persons or nations; retaliation, that of returning evil for evil, or disfavours for disfavours. Accurately speaking, we reciprocate favors and retaliate disfavours. This then is a retaliatory statute. It treats the companies of other states as Ohio companies are treated in those states; but the moment it is made to appear that Ohio companies are not treated with the same favor in another state, that companies of that state are treated in Ohio, a case is made for the application of its provisions, and retaliation follows as a result.

"It is true that the ultimate object of the statute is to secure reciprocity; but what we have now to do with, is not its ultimate, but its immediate object, and that is to retaliate on the companies of a given state, disfavours shown to Ohio companies in the same state."

It is therefore my opinion that you are justified in invoking the retaliatory provision of the Ohio Insurance Law upon the state of facts mentioned in your letter.

Respectfully,

C. C. CRABBE,

*Attorney General*

2995.

AUTHORITY OF DISTRICT BOARD OF HEALTH TO PURCHASE AUTOMOBILE FOR USE OF EMPLOYEES.

*SYLLABUS:*

*There is no express authority authorizing a district board of health to purchase an automobile for the use of its employes. However, where conditions are such that the successful, economical and efficient performance of the board's duties, which are expressly imposed by statute, requires such a purchase, the authority is reasonably implied. Whether or not such a condition exists is a question of fact to be determined in each case, in the discretion of the board.*

COLUMBUS, OHIO, December 9, 1925.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your communication as follows:

"You are respectfully requested to furnish this department your written opinion on the following:

"Question: May a district board of health legally use the funds under its control for the purchase of an automobile for the use of the health commissioner or nurse employed by such board?"

It is believed that the statutes now in force essential to consider relating to the duties and powers of a district board of health are as follows:

"Sec. 1261-19. \* \* \* The district board of health shall appoint a district health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the district board. Said appointee shall be a licensed physician and shall be secretary of the board and shall devote

such time to the duties of his office as may be fixed by contract with the district board of health. \* \* \* The district health commissioner shall be the executive officer of the district board of health and of the state department of health. He shall be charged with the enforcement of all sanitary laws and regulations in the district, and shall have within the general health district all the powers now conferred by law upon health officers of municipalities.  
\* \* \*

"Sec. 1261-22. In any general health district the district board of health may upon the recommendation of the health commissioner appoint for whole or part time service a public health nurse and a clerk and such additional public health nurses, physicians and other persons, as may be necessary for the proper conduct of its work. Such number of public health nurses may be employed as is necessary to provide adequate public health nursing service to all parts of the district. The district health commissioner and other employes of the district board of health may be removed for cause by a majority of the board. The board of health of each district may provide such infant welfare stations, prenatal clinics and other measures for the protection of children as it may deem necessary. It may also provide for the prevention and treatment of trachoma and may establish clinics or detention hospitals and provide the necessary medical and nursing service therefor."

"Sec. 1261-26. In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and other charitable, benevolent, correctional institutions. The district board of health may also provide for the inspection of dairies, stores, restaurants, hotels and other places where food is manufactured, handled, stored, sold or offered for sale, and for the medical inspection of persons employed therein. The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent diseases. \* \* \*

"Sec. 1261-28. Each district board of health may provide for the free treatment of cases of gonorrhoea, syphilis and chancroid. It may establish and maintain one or more clinics for such purpose and may provide for the necessary medical and nursing service therefor. The district board of health may provide for the quarantine of such carriers of syphilis, gonorrhoea, or chancroid, as the state commissioner of health shall order to be quarantined. It shall use due diligence in the prevention of such venereal diseases and shall carry out all orders and regulations of the state department of health in connection therewith."

"Sec. 1261-31. The district health commissioner may make or cause to be made frequent inspection of all county infirmaries, children's homes, workhouses, jails, or other charitable, benevolent or penal institutions in the district, including physical examination of the inmates whenever necessary, and may make or cause to be made such laboratory examinations of such inmates as may be requested by any state or county official having jurisdiction over such institution."

"Sec. 1261-33. The district board of health may establish detention hospitals for cases of communicable diseases and provide for the support and maintenance thereof. \* \* \*

"Sec. 1261-38. \* \* \* Expenses of the district board of health of a general health district shall be paid on the warrant of the county auditor issued on vouchers approved by the district board of health and signed by the district health commissioner. \* \* \*"

Section 1261-40 provides that the board of health of a general health district shall annually, on or before the first Monday of April, submit an itemized budget showing the amounts needed for the current expenses for the fiscal year beginning on the first day of January next ensuing. Such estimate is to be certified to the county auditor and submitted by him to the budget commissioners. The budget commissioners are clothed with power to cut down such estimates. However, the amounts fixed by the budget commissioners are to be levied and collected for the benefit of the "district health fund."

Section 1261-41 authorizes the board, in cases of epidemics or threatened epidemics, or during the unusual prevalence of a dangerous communicable disease, when the moneys in the district are not sufficient, to borrow money to be transferred to the "emergency health account."

"Sec. 1261-42. 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. \* \* \*

"Sec. 4409. \* \* \* Each board of health, \* \* \* shall procure suitable books, blanks, and other things necessary to the transaction of its business. \* \* \*"

There is no express statutory authority granting power to the district board of health to purchase motor vehicles. It therefore becomes essential to consider whether or not the statutes granting the powers of said board will permit of such a construction as to justify the conclusion that such power has been granted by implication. The rule has frequently been announced by the courts of Ohio to the effect that boards of this character have such powers as are expressly granted or clearly implied. See *Board of Education vs. Best*, 52 O. S. 152.

It will be observed upon consideration of the statutes hereinbefore set forth that the district board of health is charged with a great responsibility in the carrying out of the provisions of the health laws. It is apparent also that the health commissioner, physicians and nurses cannot perform efficient services without some practical means of transportation to and from places where their services are required. The statutes do not expressly make any provision for any kind of transportation. However, to take the position that the work of the board of health could not be performed on account of no provision having been made relative to the transportation of employes of the board would be an absurdity in derogation of the decisions of the Ohio Courts relating to statutory construction. It cannot be denied that a board of this character has such incidental powers as are necessary to enable it to perform the duties expressly imposed. It should be further mentioned in this connection that the courts have frequently held that in view of the public interest confided in boards of health, laws relating to their powers should be liberally construed in favor of the board.

From the sections heretofore quoted it will be clearly seen that it was contemplated by the legislature that there would be current expenses which the board would have, and for the payment of such provision has been made. The legislature has not attempted to define what would be proper expenses of this character. Therefore it will be seen that your question must be decided upon the facts. What is a proper expenditure in one case may be wholly improper in another. In a general health district in which the duties of the board of health and its employes are such as make it more economical

to purchase an automobile than to rely upon other means of transportation, and the efficiency of the board, in view of conditions, requires such, it is believed that by implication sufficient authority may be found. On the other hand, if the work of the board is such that the purchase and maintenance of an automobile is not necessary to the successful, economical and efficient conduct of its work, such an expenditure would not be justified.

It may be borne in mind that the object of the law is to provide for the public health and welfare, one of the most important functions of government. It is believed to be proper to consider the universal custom relative to the general use of automobiles as a means of transportation in existence at the time the present health legislation was enacted. I am compelled to the conclusion that it was the legislative intent that such incidental powers were to be exercised by boards of health as would enable them to accomplish their main purpose in a practical and businesslike manner.

Therefore, as above suggested, it is my opinion that where conditions are such as to require the board of health to purchase an automobile in order to render the proper service to the public in the performance of its duty, expressly imposed, such power will be reasonably implied. Whether or not such a condition exists must be determined in the discretion of the board. On the other hand, in those cases wherein the duties of such a board can be performed in a satisfactory and efficient manner without such an expenditure such a purchase undoubtedly would be an abuse of its power.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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2996.

DISAPPROVAL, BONDS OF VILLAGE OF ANSONIA, DARKE COUNTY,  
\$40,000.00.

COLUMBUS, OHIO, December 9, 1925.

Re: Bonds of Village of Ansonia, Darke County, \$40,000.00.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The foregoing bonds are issued under the provisions of section 12, Article XVIII of the Constitution of the State of Ohio, which provides as follows:

“Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.”

It is, therefore, observed that such mortgage bonds are not general obligations of the municipality, but on the other hand are secured only by mortgage on a public utility, which in this case is on the waterworks and electric light plant of said village.

Section 2 of the ordinance providing for the issue contains the following provision: