

It would seem, therefore, that when the boundaries of a municipal corporation are extended prior to the first Monday of June, no special provision is necessary to authorize the levy of the municipal tax upon the annexed property. If it were otherwise, no levy by the municipality could be made on property brought within the corporation between the second Monday of April and the first Monday of June; whereas a levy might be made on the property of the territory annexed subsequent to the first Monday of June of the current year.

We are of the opinion that the levy certified by the municipality should have been entered upon the property of the annexed territory, instead of the levy certified by the trustees of the township."

By way of specific answer to the question submitted in your communication I am of the opinion therefore that tax levies to meet its annual budget certified by the City of Girard to the county auditor after the effective date of the ordinance or resolution of the council of said city accepting the annexation of territory here in question should be extended upon the taxable property in the territory so annexed as well as on the property within the original territory of said city. It may be proper to add that this conclusion is in no wise affected by the fact that the lien of the state for taxes for all purposes attaches to all real property subject to taxes on the day preceding the second Monday of April. *State ex rel. vs. Craig, Auditor, supra; State ex rel. vs. Roose, Auditor, 90 O. S. 345, 351.*

Respectfully,
EDWARD C. TURNER,
Attorney General.

2359.

BOARD OF HEALTH OF DISTRICTS—AUTHORITY OF BOARD DISCUSSED—VACCINATION OF DOGS.

SYLLABUS:

1. *By the terms of Sections 1261-26, 1261-30 and 1261-42, General Code, a district board of health may make such orders and regulations as it deems necessary for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances.*

2. *Whether an order of a district board of health is reasonable or unreasonable is a judicial question. The character of the precautions that may be reasonably necessary depends on the circumstances, and each requirement must be scrutinized in the light of the conditions existing at the time of its adoption.*

3. *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.*

COLUMBUS, OHIO, July 16, 1928.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge your letter dated June 30, 1928, which reads as follows:

"Rabies being prevalent in the community, the District Board of Health has passed a resolution relative to the vaccination of dogs against rabies which is set out below.

May 11, 1928.

The District Board of Health met on the above date with the following members present:

G. W. S., M. D.
E. G. N.,
H. J. K.

On motion by G. W. S., M. D., seconded by H. J. K., that the following resolution be made. By direction and advice of the State Department of Health, Monroe County Commissioners, and Advisory Council of Monroe County. Therefore be it resolved that,

Whereas, it appears that there is danger of Hydrophobia in Monroe County,

Whereas, it appears that many children and animals in Monroe County have been recently attacked and bitten by dogs.

Now, therefore, we the Board of Health of Monroe County by certain recommendation resolve that all dogs be immediately vaccinated and made immune to Hydrophobia by a duly licensed veterinarian and a certificate issued by said veterinarian evidencing such vaccination and that a metal tag evidencing such vaccination be and remain attached to said dog for one year from date of vaccination. All dogs running at large in any manner contrary to this proclamation shall be deemed a nuisance and shall be dealt with accordingly. This to become effective July 15, 1928.

Vote, G. W. S., M. D., Yes,

H. J. K., Yes,

E. G. N., Yes. Motion carried.'

This resolution was published in the various county papers shortly after its adoption by the District Board of Health and hundreds of dogs are being vaccinated as a result of this order. However, many persons are raising the question as to whether or not the District Board of Health has not exceeded its authority.

The recently amended section of the Code, Number 5652-16 is cited as being the limit to which the Board of Health can go in making an order relative to the control of the spread of rabies.

You will note that this order of The Board of Health is to become effective July 15, 1928, and undoubtedly I will be called upon shortly after that date to prosecute for violations of this order. Therefore, I would appreciate it greatly, if you could place in my hands by July 15th, an opinion on the legality and enforceability of the above order of The District Board of Health."

As provided by Section 1261-16, General Code:

"For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district * * * .

The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. * * *

By the terms of Section 1261-17, General Code:

“In each general health district, except in a district formed by the union of a general health district and a city health district, there shall be a district board of health consisting of five members * * *.”

Section 1261-18, General Code, provides for the creation of a district advisory council, which council:

“shall proceed to select and appoint a district board of health as hereinbefore provided * * *. Of the members of the district board of health, one shall be a physician. * * *”

Section 1261-19, General Code, provides:

“Within thirty days after the appointment of the members of the district board of health in a general health district, they shall organize by selecting one of the members as president * * *. The district board of health shall appoint a district health commissioner * * *. Said appointee shall be a licensed physician * * *. 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. * * *”

As provided by Section 1261-26, General Code:

“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 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. * * *”

By the terms of Section 1261-30, General Code:

“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. * * *”

Section 1261-42, General Code, provides:

“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,

seconded 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."

You will note that, as provided by Section 1261-30, supra, a district board of health is authorized to "exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality." Sections 4404 et seq., General Code, provide for the creation of boards of health in municipalities and define the powers and duties of such boards.

Section 4413, General Code, in so far as pertinent, provides:

*"The board of health of a city 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. * * * (Italics the writer's.)"*

In the case of *Cincinnati vs. Allison*, 12 O. D. 376, the following language appears on page 379:

"It may be considered a legal axiom that the preservation of the public health is a proper and necessary exercise of the police power of the state; that boards of health are appointed as subordinate departments of the state, charged with the general supervision of the interests of the health of the community, and vested with power to make regulations for preventing the spread of disease, and in other ways to care for the public health."

See also the case of *Williams vs. Scudder*, 102 O. S. 305, wherein, on page 307, the following language is used:

"Public health is the very heart of public happiness. The constitutional guarantees of life, liberty and the pursuit of happiness are of little avail unless there be clearly implied therefrom the further guaranty of safeguard of the public health, in order that life, liberty, and the pursuit of happiness, shall be made practical and plenary."

You will note that the sections of the General Code above referred to confer almost unrestricted powers, save only such limitations as are imposed by the constitution, upon a district board of health. Generally speaking courts will not interfere with any reasonable regulation enacted by such boards so long as such regulations are justified by public necessity and do not violate any constitutional provision. You will note that both Sections 1261-42 and 4413, supra, authorize such boards to make such orders and regulations as they deem necessary for the public health, the prevention or restriction of disease and the prevention, abatement or suppression of nuisances.

It is stated in 29 Corpus Juris at page 242:

“It is a well recognized principle that the protection of the public health is one of the first duties of government.”

and at page 248 of the same authority, the following language appears:

“Powers conferred upon boards of health to enable them effectually to perform their important functions in safeguarding the public health should receive a liberal construction. * * * Whether an order is reasonable or unreasonable is a judicial question. Before an ordinance or regulation of a board of health can be said to be unreasonable, however, it should clearly so appear. * * * The character of the precautions that may be reasonably necessary in normal conditions of public health depends on the circumstances, and each requirement must be scrutinized in the light of the conditions existing at the time of its adoption.”

You refer to Section 5652-16, General Code, which provides:

“Whenever in the judgment of any city or general health district board of health, or person or persons performing the duties of a board of health, rabies shall be declared to be prevalent, such board of health, shall declare a quarantine of all dogs in such health district, or part thereof. The quarantine so declared shall consist of the confinement of any dog or dogs on the premises of the owner or in a suitable pound or kennel if a pound or kennel is provided by the city or county; provided, a dog may be permitted to leave the premises of the owner if under leash or under the control of the owner or other responsible person. The quarantine order herein authorized shall be considered an emergency and need not be published.

When a quarantine of dogs has been declared in any health district, or part thereof, it shall be the duty of the dog warden and all other persons having the authority of police officers to assist the health authorities in enforcing the provisions of the quarantine order.

The penalty for the violation of the rabies quarantine order shall be the same as provided for the violation of other orders or regulations of the board of health.”

I am of the opinion that the provisions of this section are not exclusive in so far as determining or restricting the power of a board of health. If the exigencies of the situation, in the judgment of the board of health, require other or different precautions to safeguard the health of the citizens of the community, I am of the opinion that such board may enact any ordinance which is reasonably commensurate with the conditions then prevailing.

Answering your question specifically I am of the opinion that the order of the district board of health of which you inquire cannot be said to be clearly unreasonable so as to render the same illegal.

Respectfully,
EDWARD C. TURNER,
Attorney General.