2904.

DEPARTMENT OF HEALTH—WHERE PUBLIC WATER SUPPLY HAS BECOME OFFENSIVE TO TASTE AND SMELL AS RESULT OF COMBINATION OF DISINFECTANTS BUT NOT CONTAMINATED OR RENDERED IMPURE AS RESULT OF SUCH COMBINATION—DEPARTMENT WITHOUT POWER TO ACT—CITY OF CLEVELAND.

Under the facts herein submitted, the state director of health has no power to act under General Code sections 1249 *and* 1261 *inclusive, where a public water supply has become offensive to taste and smell as the result of a combination of disinfectants contained therein, but which is not contaminated or rendered impure as a result of such combination.*

COLUMBUS, OHIO, February 27, 1922.

HON. HARRY H. SNIVELY, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date in which you request the opinion of this department, as follows:

> "Under date of December 16, 1921, this department received from the director of public welfare and the commissioner of the division of health of the city of Cleveland three complaints regarding the condition of the Cleveland public water supply.
>
> The complaints are in proper form and a copy of one is attached hereto to give you definite information as to the nature of the complaints. I also attach a statement by our chief engineer, giving information as to the cause leading up to these complaints.
>
> In my opinion, there is some doubt as to the jurisdiction of the state department of health to act on these complaints. I am, therefore, asking your opinion as to whether or not your interpretation of sections 1249-1261, inclusive, of the General Code confers upon the state department of health authority to act under the circumstances outlined in the complaint and in the statement of cause."

The complaint filed with your department is in part as follows:

> "The McKinney Steel Company is discharging and permitting to be discharged its waste waters into said river; that said waste waters contain phenol and other impurities which *pollute* the water; that these trade waste waters are carried into Lake Erie and in part come within the radius of the water taken into said intakes."

The statement of your chief engineer, which accompanied your request, is as follows:

> "The three industrial plants are located in the valley of the Cuyahoga river, which stream receives the industrial wastes. Each of the plants operates a coke oven and produces wastes which are high in phenols. The Cuyahoga river discharges into Lake Erie and at a point four miles north of the river the city secures its water supply from the lake through two intakes. About two-thirds of the city water supply is filtered with final disinfection and about one-third of the supply is unfiltered and is treated by disinfection

only. Serious complaints of tastes and odors in the water supply as delivered to consumers have arisen and the city water department officials have investigated the matter thoroughly. The results of this investigation appear to show that the phenol bearing wastes reach the water supply intakes of the city and are, therefore, present at times in the water supply pumped for the city's use. Experiments made by the city indicate that the presence of the phenols interferes with the successful disinfection of the water supply of the city. The effect is the production of a very offensive taste when chlorine is added to the water and it, therefore, becomes impracticable to add sufficient chlorine to effect a satisfactory purification of the water from the bacterial standpoint. The city water works officials, therefore, find themselves forced to provide either a water supply which is of unsatisfactory sanitary quality or one which is objectionable on account of offensive tastes and odors.

It will be noted that the phenol wastes are not in themselves a contamination of the water supply in the sense of introducing a substance which causes disease. Indirectly, however, they interfere with the proper purification of the water supply. The officials of the city of Cleveland, therefore, believe that they are justified in entering complaint under section 1249 G. C. of Ohio. Apparently, there is a question as to whether the State Department of Health has authority to act in this case, as section 1250 requires a finding that 'the source of public water supply * * * is subject to contamination, or has been rendered impure by such discharge of * * * wastes'."

Further facts submitted by you as true in consultation are as follows:

(1) Phenol is a disinfectant.

(2) Chlorine is not introduced because of the presence of phenol, but because of the presence of sewage and other impurities.

(3) The water is not contaminated or rendered impure because of the presence of phenol.

Referring to the Code sections as mentioned in your inquiry, section 1249 is as follows:

"Whenever the council or board of health, or the officer or officers performing the duties of a council or board of health, of a city or village, the commissioners of a county, the trustees of a township or fifty of the qualified electors of any city, village or township, or the managing officer or officers of a public institution set forth in writing to the state department of health that a city, village, public institution, corporation, partnership or person is discharging or is permitting to be discharged sewage or other wastes into a stream, water course, canal, lake or pond, and is hereby creating a public nuisance detrimental to health or comfort, or is polluting the source of any public water supply, the commissioner of health shall forthwith inquire into and investigate the conditions complained of."

A reading of this section indicates that it relates to two subjects: (1) The discharging of sewage in water of streams, water courses, canals, etc., and, (2) the polluting of the source of a public water supply. The complaint as filed is based on the pollution of a public water supply. "Pollution" means to make unclean, and it is to be remembered that your statement of facts admits that phenol does not make water unclean and it does not make it unhealthy.

General Code section 1250 is as follows:

> "If the commissioner of health finds that the discharge of sewage or other wastes from a city, village or public institution, or by a corporation, partnership or person, has so corrupted a stream, water course, canal, lake or pond, as to give rise to foul and noxious odors or to conditions detrimental to health or comfort, the source of public water supply of a city, village, community or public institution is subject to contamination, or has been rendered impure by such discharge of sewage or other wastes, he shall notify the mayor or managing officer or officers of such city, village, public institution or corporation, partnership or person of his findings and of the time and place when and where a hearing may be had before the public health council. The notice herein provided shall be by personal service or by registered letter."

Under this section it is necessary before making any order as provided in the General Code sections following to find that the *source of public water supply is subject to contamination, or has been rendered impure by such discharge of sewage or other wastes.* The General Code sections following provide for the order of the health commissioner, appeals from such order and penalty for non-compliance with the order given by the health commissioner.

In the instant case it cannot be found as provided in section 1250, as the water is not impure with either chlorine or phenol, or both, contained therein.

The powers given to the health commissioner, held penal in their nature, are not to be as strictly construed as penal statutes generally, however such construction must be confined to the power actually given. The water not being rendered impure makes it impossible to make the finding provided by statute.

Water purification for the protection of health is not the question at hand and it is impossible for the health commissioner to make the finding required by law under said section 1250. This being true, you are advised that you have no power to act in the instant case.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2905.

STATUS, ABSTRACT OF TITLE, PREMISES SITUATED IN ADAMS TOWNSHIP, LUCAS COUNTY, OHIO, OF TOWN 3, UNITED STATES RESERVE AT FOOT OF RAPIDS OF MIAMI OF LAKE ERIE.

COLUMBUS, OHIO, February 27, 1922.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract which was last continued by the Lucas County Abstract Company, of Toledo, Ohio, on February 7, 1922, and inquire as to the status of the title to the following described premises as disclosed by said abstract: