

Legal Notes
on public health

Constitutionality of
Delegation of Legislative Powers
To State Boards of Health

The provisions of the Arizona State Sanitary Code which were applicable to agricultural labor camps were declared void, and the provisions of an Arizona statute on which the code is based were held to be an unconstitutional delegation of legislative power by the Supreme Court of Arizona on January 15, 1953—*State of Arizona v. Marana Plantations*, 252 P. (2) 87 (1953).

The Arizona statute authorized the Arizona State Board of Health to "formulate general policies affecting the public health," to "regulate sanitation and sanitary practices in the interests of public health," and to "protect and promote public health and prevent disability and mortality."

The court's decision was based on the ground that the statute permits the Arizona State Board of Health to issue "such sanitary laws as its unrestrained discretion may dictate" without statutory guides or criteria.

Pursuant to the statute the Arizona State Board of Health had adopted regulations governing health aspects, water supply, toilets, bathing facilities, housing, fire protection, and garbage disposal at agricultural labor camps. The board of health had charged the defendant, Marana Plantations, with violating these regulations, and the defendant had challenged the basic authority of the board to issue them.

The scope of the police power of States as

it relates to health has been succinctly stated by the Supreme Court of Appeals of West Virginia in *Hayes v. The Town of Cedar Grove*—126 W. Va. 828, 30 SE 2d 726, 731, 156 ALR 702 (1944):

"So far as we know, the power of the State, under its police power, to provide for the health of its people, has never been questioned, but on the contrary, has been stressed as one of the powers which may be given the broadest application; and it is common knowledge that this power has been increasingly exercised, in keeping with advances made in the sciences of medicine and sanitation, in recent years. In these circumstances, courts are reluctant to place limits on what may be done in the interest of the health of a community, so long as unreasonable methods are not employed, nor the natural and constitutional rights of citizens invaded.

"The police power of the State is vested in the legislative branch of our Government, and may be employed or delegated by it, subject only to the control of the courts, to the extent that they may properly act."

Delegations of authority in broad terms to State boards of health to make regulations having the force of law for the protection of public health and for the prevention of disease have generally been upheld by the courts. (See 25 Am. Jur. 287, note 2; 79 L. Ed. 523.) The stricter rule applied in some States, such as Arizona, requires more specific statutory criteria and should be carefully considered when preparing health legislation intended for enactment by the legislatures.

This note has been prepared by the Public Health Division, Office of the General Counsel, Department of Health, Education, and Welfare.

publications

Educational Materials on Water Pollution Control.

Public Health Service Publication No. 256. 1953. 2-fold leaflet. Division of Water Pollution Control, Public Health Service, Washington 25, D. C.

Exhibits, posters, films, and publications may be obtained through Federal and State water pollution control agencies for use by local organizations and groups to aid in the fight to make America's waters safe and clean. Every community needs to feel its responsibility in making and keeping its own water resources clean for drinking and domestic use, for raising crops and livestock, and for recreation uses.

This leaflet contains illustrations and descriptions of the educational materials available to use in the community's fight for clean water. It tells where to send for the items best suited to a specific program for water pollution control.

Basic Drugs—U. S. Public Health Service Hospitals and Clinics.

Public Health Service Publication No. 246. 1953. 165 pages. 50 cents.

The Division of Hospitals, Bureau of Medical Services, Public Health Service, has prepared a handbook of basic drugs for the division's 18 hospitals and 22 outpatient clinics. The handbook is intended as the beginning rather than the arbitrary end in drug therapy. The primary criterion is therapeutic efficacy—selection of the best, the simplest, the fewest, and the safest medicines currently needed in the prevention, diagnosis, and treatment of illnesses. Preference is given to U. S. Pharmacopeia, the National Formulary, New and Nonofficial Remedies, and Accepted Dental Remedies items.

Unnecessary duplication is avoided in the handbook. Drugs with secret composition are not considered, and

mixtures are included only when they provide substantial advantage over the individual components.

However, "nonbasic" drugs which prove to have a high rate of acceptance by the individual division stations will eventually be added to the list of "basic" drugs in future revisions. The handbook further recommends the rapid and extensive adoption of meaningful, standard drug terminology and the metric system.

The philosophy, objectives, and application of this manual in a general program of maintaining sound drug therapy were presented in an article, "An Objective Approach to Drug Therapy," published in the January 1953 issue of *Public Health Reports*.

Clean Water in the Arkansas, White, Red, and Lower Mississippi Valleys.

Public Health Service Publication No. 252. 1952. 6 pages; illustrations. 5 cents.

It pays to prevent water pollution. Damage to water resources from the wastes discharged by our growing cities and industries can be controlled. The publication cites experiences of several cities of the southwest-lower Mississippi area which were compelled to find new water supply sources because the rivers flowing through or near the cities became polluted. Questions asked are: What happens if the new sources get polluted? Do we go to still more distant ones? Suppose all our public waters except those too small or remote for use get polluted, what then?

Reference is made to a State-Federal report on water pollution in the Arkansas area which lists more than 500 cities as needing some kind of facility for waste treatment. The total cost of those facilities is estimated at \$50 million, but divided among the cities and financed over a period of years, the cost to each

family in the community will be no more than a few cents a day. This, the booklet states, is little enough to pay in return for abating an evil that endangers health, spoils water for industrial and agricultural use, kills fish and wildlife, ruins recreational areas, and is undermining the very foundation of our highly urbanized and industrialized American way of life.

Let's Have Clean Water.

Kit of materials to aid community leaders in their efforts to solve local water pollution problems. Public Health Service Publication No. 264. 1952. 5 parts. \$1.25 per kit.

Theodore Roosevelt said, "The Nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased; and not impaired in value." Water pollution in this country is a constant threat which must be controlled if we are to maintain an adequate supply of safe, clean water for home, for agriculture, for industry, and for recreation.

In order to increase the general awareness of the need for pollution control and to aid communities in developing their own control programs, the Division of Water Pollution Control has prepared this kit of materials designed for local leaders of civic clubs, women's clubs, sportsmen's groups, and the like. Included in the kit are a series of six background readings entitled "The Living Waters," covering the uses of water and the importance of pollution control. A "Chairman's Guide" gives suggestions on discussion techniques and on the use of motion pictures, panel discussions and speakers in local meetings, and provides sources of information for community leaders, including the names of all State water pollution control agencies.

Three publications issued earlier have been incorporated into the kit: "The Fight To Save America's Waters," a story of public health and conservation featuring the familiar comic strip character, Mark Trail. "Clean Water Is Everybody's Busi-

ness" presents a graphic review of the water pollution problem and how it affects various aspects of our daily lives. The third publication, "Water Pollution in the United States," gives a more detailed description of the water pollution problem, and a discussion of the costs and responsibilities for control programs.

A Bibliography of Toxoplasmosis and *Toxoplasma*

Gondii. By D. E. Eyles and J. K. Frenkel. Public Health Service Publication No. 247. 1952. 47 pages. 20 cents.

Toxoplasmosis has been recognized as a human disease for little over a decade; it is therefore possible for the interested researcher to become acquainted with most of the published material on the subject. The authors of A Bibliography of Toxoplasmosis and *Toxoplasma gondii*, who have had occasion to study the literature and have collected reprints, photoprints, or translations of most of the papers, have covered the literature through 1951. A few 1952 papers are included. The earliest paper cited is by Laveran—the date, 1900. This was followed in 1913 and 1915 by other papers by the same author, but 20 years elapsed before more than an occasional paper appeared in the literature. The bibliography contains 920 titles.

In their preface, the authors state that because of time limitations, it was not possible to be critical in selecting titles. Some papers dealing with organisms erroneously assigned to *Toxoplasma* by their authors are included, and there are references to a few case reports in which the evidence that *Toxoplasma* was involved is scant or poor. A number of papers which do not refer to *Toxoplasma* are included as they are now considered to deal with this organism.

In preparing the bibliography, full citations are given if the information is available, and references to abstracts have been listed with the citation of the original whenever possible.

Milk Ordinance and Code. 1953 Recommendations of the Public Health Service.

Public Health Service Publication No. 229. 1953. 242 pages. 75 cents.

The twelfth revision since 1924, the 1953 edition of the Milk Ordinance and Code recommended by the Public Health Service takes cognizance of the notable progress in milk sanitation since 1939.

Like the preceding editions, this revision has been developed with the assistance of the U. S. Department of Agriculture, the Food and Drug Administration, State health and agriculture departments, local health departments, the dairy industry, educational institutions, and individual milk sanitarians.

The book is presented in a form which can be adopted as an ordinance or other legal instrument. Part I contains an abridged form of the recommended milk ordinance suggested for local adoption in States where adoption of ordinances by reference to published standards is considered legal. The Council of State Governments has prepared a model law, "Milk and Food Codes Adoption Act," published in "Suggested State Legislation Programs for 1950."

Part II is the complete ordinance. It details the definition of milk and milk products, the issuing of permits, standards for labeling, inspection, examination, grading, and grades of milk. Section 11 regulates milk and milk products from points beyond the limits of routine inspection.

Part III contains the interpretative code, which together with part IV is to be used as the legal interpretation of the ordinance. It repeats the provisions of part II and gives the reasons for each requirement.

Part IV consists of nine appendixes containing detailed explanatory material and standards formerly used in the code, but now transferred to provide a condensed reference to essential detail not

routinely used. The appendixes are an integral part of the code.

On several major and minor questions, the ordinance offers two or more choices. A "degrading" and a "nondegrading" form for enforcement are given. Among other items of choice are: use of reduction tests instead of plate or direct microscopic counts where suitable laboratory facilities cannot be provided; use of a compliance standard of 3 out of 4 samples rather than logarithmic or arithmetic averages of 4 samples.

The Public Health Service is cooperating in a voluntary program of certification of interstate milk shippers. The model ordinance discourages the use of public health regulations to establish unwarranted barriers against acceptance of high-grade milk from other milksheds.

The program of interstate milk certifications was supported by the Committee on Agriculture and Forestry of the United States Senate which "strongly recommended that the Milk Ordinance and Code of the Public Health Service should be used as the minimum standard for the sanitary rating and acceptance of interstate milk shipments."

Home Accident Prevention—A Guide for Health Workers.

Public Health Service Publication No. 261. 1953. 75 pages. Information concerning the availability of this publication can be obtained from the Public Inquiries Branch, Public Health Service, Washington 25, D. C.

Accidents in the home in 1951 accounted for an estimated total of 28,000 deaths, 110,000 individuals permanently disabled, and 4,200,000 persons temporarily disabled. Because this loss of manpower and the drain upon medical facilities can be prevented, the public health profession is being called upon to take the leadership in developing home accident prevention programs.

In response to numerous requests from educators for assistance in introducing home accident prevention

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materials in the training of professional public health workers, this booklet has been prepared as a guide for discussion of the problem.

In 13 sections, this publication outlines the chief problems of home accident control, the major causes of home accidents, and recommended preventive measures. The major causes of accidents covered are: falls, fire, hot surfaces and hot liquids, poisons, gases, toxic vapors, and insecticides, electricity, cutting and piercing instruments, firearms, and lifting, carrying, and lowering. In addition, there are outlines for discussion of the general problem, the epidemiological aspects of accidents, environmental hazards, and human and age factors. Selected references and lists of visual aids are contained in the appendixes.

Cancer Illness Among Residents of Philadelphia, Pa.

Cancer Morbidity Series No. 10, Public Health Service Publication No. 244. 1952. 43 pages; tables, charts. Individual copies available on request to National Cancer Institute, Public Health Service, Bethesda 14, Md.

This publication, the tenth and last of the Cancer Morbidity Series, reports that, as in most of the other cities studied, cancer is apparently increasing among the residents of Philadelphia, Pa.

According to a survey made in 1948, the incidence rate for cancer was 26 percent greater than in 1938, while the prevalence rate was up 21 percent. The greatest increase noted was for cancer of the bronchus and

lung, for which the incidence rose 101 percent in the 10-year period.

Approximately half of the cancer cases diagnosed in 1948 were discovered while localized at the site of origin; 2 out of 10 were not diagnosed until remote tissues had become involved. The fact that less than two-fifths of breast cancer cases—an accessible site—were diagnosed while localized points to the need for improvement in case-finding techniques for accessible as well as inaccessible sites, the report indicates.

The first nine studies in the Cancer Morbidity Series covered the Atlanta, New Orleans, San Francisco, Denver, Pittsburgh, Chicago, Dallas, Birmingham, and Detroit areas. A summary containing geographic comparisons, interpretations of apparent national trends, and special analyses will be issued at a later date.

Small Plant Health and Medical Programs.

By Margaret C. Klem and Margaret F. McKiever. Public Health Service Publication No. 215. 1952. 213 pages; tables. 50 cents.

This publication has been prepared to meet requests for current information on small plant health and medical programs and is designed for employers who wish to establish in-plant health programs and for labor, professional, and other groups that have a special interest in employee health.

The report is concerned primarily with the organization and methods of providing health services in in-

dustry by physicians and nurses. It does not cover the technical phases of industrial hygiene engineering and chemistry or the clinical aspects of occupational medicine.

There are three major sections, the first of which, "Employee Health in Relation to Industrial Expansion," describes the need for employee health programs and the trends in the development of major types of health programs. It gives current data on personnel and facilities serving the employees in establishments of various sizes in the United States as a whole, and in selected States and cities.

Section II, "Type and Extent of Small Plant Health and Medical Programs," is concerned with the development of small plant health programs and the costs and accomplishments of such programs. A description of six cooperative programs, four communitywide projects developed under a variety of sponsorships, and four individual small plant programs is contained in the third section. Appendixes contain detailed information that may be of assistance to those responsible for the development and direction of small plant programs. References to general information in the field are also given.

Publications for which prices are quoted are for sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Orders should be accompanied by cash, check, or money order and should fully identify the publication (including its Public Health Service publication number). Single copies of most Public Health Service publications can be obtained without charge from the Public Inquiries Branch, Public Health Service, Washington 25, D. C.
