

State

Board of Health may, when the emergency exists, require that persons be vaccinated and establish quarantine regulations to prevent the outbreak and spread of Epidemic and communicable diseases.

December 1, 1921.

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Dr. Cortez F. Enloe,
Secretary Missouri State Board of Health,
Jefferson City,
Missouri.

My dear Sir:--

Your letter of November 30, 1921, stating that "there is a threatened epidemic of smallpox in this State, and many serious cases and a number of deaths resulting from the severe forms of confluent and hemorrhagic kinds of smallpox have occurred in different parts of the State from passengers coming out of Kansas City," has been received by this Department.

Your letter further states:

"Kansas City, up to yesterday since September 1, reports 271 cases of smallpox with 96 deaths. It is the opinion of this Department that an emergency exists for protection of public Health of the State. Therefore, I respectfully ask your opinion if there is any law by which we can compel passengers coming from Kansas City to stations within the state, to be vaccinated or submit to the usual quarantine regulations upon their arrival at their destination."

In answer to your inquiry I call attention to the following provisions of the Revised Statutes of Missouri, 1919:

Section 5772:

"It shall be the duty of the state board of health to safeguard the health of the people in the state, counties, cities, villages and towns. It shall make a study

of the causes and prevention of diseases and shall have full power and authority to make such rules and regulations as will prevent the entrance of infectious, contagious, communicable or dangerous diseases into the state. It may send representatives to public health conferences when deemed advisable, and the expenses of such representatives shall be paid by the state as provided in this chapter for expenses of the members of the state board of health."

Section 5773:

"The board shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate rules, regulations and procedures to prevent the spread of those diseases and to determine the prevalence of said diseases within the state."

Section 5784:

"All rules and regulations authorized and made by the state board of health in accordance with this chapter shall supersede as to those matters to which this article relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the state board of health which may be necessary for the particular locality under the jurisdiction of such local authorities."

section 5785:

"Nothing in this article shall apply to

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cities which now have, or may hereafter have, a population of 75,000 or over who are maintaining organized health departments: Provided, that such cities shall furnish the state board of health reports of contagious, infectious, communicable or dangerous diseases, which have been designated by them as such, and such other statistical information as the board may require."

Section 5786:

"Any person or persons violating refusing or neglecting to obey the provisions of this article or any of the rules and regulations or procedures made by the state board of health in accordance with this article, or who shall leave any pesthouse, or isolation hospital, or quarantined house, or place without the consent of the health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of contagious, infectious, or communicable disease, or who removes, destroys, obstructs from view, or tears down any quarantine card, cloth or notice posted by the attending physician or by the health officer, or by direction of a proper health officer, shall be guilty of a misdemeanor."

From the foregoing provisions it will be seen that the State Board of Health is empowered and it is made its duty to execute such sanitary regulations as may be considered expedient to prevent the outbreak and spread of epidemic and communicable diseases.

Recurring to your first question concerning compulsory vaccination, it has frequently been held that it is a valid exercise of the police power and no infringement of constitutional guarantees to require all members of the community to submit to vaccination subject to a penalty for failure so to do. The question is one which the Board of Health, in the exercise of the powers con-

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ferred upon it, must determine. The regulations adopted must not be arbitrary, oppressive or unreasonable.

The precise question whether a person may be compelled absolutely to submit to vaccination, seems never to have been determined in this State. On the other hand, the Legislature has delegated to the State Board of Health authority to make and enforce under penalty adequate rules, regulations and procedures to prevent the spread of infectious, contagious, communicable and dangerous diseases, and to determine the prevalence of said diseases within the State. Undoubtedly the authority to require the vaccination of all persons when it may be deemed necessary to the public health and safety is included within the powers so delegated.

Therefore, it is the opinion of this Department, that the State Board of Health, if and when the emergency exists, is empowered to promulgate a rule or regulation requiring all persons within a community to submit to vaccination, and that a person violating such rule or regulation is subject to the penalty prescribed.

Referring to your second question that of quarantine regulations: regulations directed to the exclusion of communicable diseases and the keeping of such diseases when they have once gained an entrance within the smallest possible limits, and provided for the establishment and enforcement of regulations by which their general dissemination shall be prevented and their continued existence rendered improbable or impossible is, no doubt, one of the most important of all health regulations. This power to make quarantine regulations the law confers upon your Board. Under this power, regulations may be adopted which provide for the isolation of persons who have infectious and contagious diseases, and which prevent persons so infected from coming within the jurisdiction of your Board, or confine them to certain areas within such jurisdiction. But there can be no lawful isolation unless the person has been exposed to the disease.

While the powers of your Board are very extensive and will be upheld whenever possible, and every presumption is indulged to sustain the validity of its action, its powers are not absolute. To sustain a quarantine the emergency must actually exist.

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The statutes give your Board authority in proper cases to quarantine persons exposed to, or ill from an infectious or contagious disease; and where such rule or regulation is valid, and a person quarantined willfully violates the terms of such rule or regulation by breaking quarantine, he is liable to the penalty prescribed for its violation.

Therefore, it is the opinion of this Department, that the State Board of Health, if and when the emergency exists, is empowered to promulgate a rule or regulation requiring that persons exposed to or ill from an infectious or contagious disease be quarantined; and when such quarantine is properly established, a person duly and lawfully quarantined who willfully violates the terms of any rule or regulation thereof, is subject to the penalty prescribed for such violation.

Very truly yours,

Assistant Attorney General.

AM-MBJ.

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MISSOURI STATE BOARD OF HEALTH
CITY OF JEFFERSON

November 30, 1921.

Attorney General Jesse Barrett,
Jefferson City, Missouri.

Dear General:-

Owing to the fact that there is a threatened epidemic of smallpox in this state, and many serious cases and a number of deaths resulting from the severe forms of confluent and hemorrhagic kinds of smallpox have occurred in different parts of the state from passengers coming out of Kansas City.

Kansas City, up to yesterday since September 1, reports 271 cases of smallpox with 96 deaths. It is the opinion of this Department that an emergency exists for protection of Public Health of the State. Therefore, I respectfully ask your opinion if there is any law by which we can compel passengers coming from Kansas City to stations within the state, to be vaccinated or submit to the usual quarantine regulations upon their arrival at their destination.

I respectfully refer you to Section 5772, of Revised Statutes, 1919, Volumn #2.

Yours truly

[Handwritten Signature]
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