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Legislative History of R.C. 3701.13

Summary

Under R.C. 3701.13, the Department of Health has the ultimate authority in matters of quarantine and isolation and the power to issue special or standing orders and rules to prevent the spread of contagious or infectious diseases. This authority and power was originally vested in the State Board of Health, the predecessor to the Department. While R.C. 3701.13 has undergone several revisions over time, that authority and power has remained largely unchanged since 1893.

R.C. 3701.13 – current law

Under current law, R.C. 3701.13 vests in the Department of Health “supervision of all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation, which it may declare and enforce, when neither exists, and modify, relax, or abolish, when either has been established.” Additionally, the Department has the power to make special or standing orders or rules “for preventing the spread of contagious or infectious diseases.”¹ R.C. 3701.13 was codified in the Revised Code in 1953 when the Revised Code replaced the General Code. Prior to that, the substance of this section was contained in General Code Section 1237; however, the Department’s authority regarding quarantine and the power to make standing orders for the prevention of the spread of disease go back much further. This memorandum describes the legislative history of R.C. 3701.13; it does not address the duties and powers of local boards of health with regard to infectious diseases.

¹ R.C. 3701.13.

Authority in matters of quarantine and isolation

The State Board of Health, the predecessor to the Department of Health, was created in 1886 by S.B. 90 of the 67th General Assembly.² The Board's initial powers were limited to supervision of the interests of the health and life of the citizens of Ohio and the duty to inquire into the cause of disease, especially the invasion and spread of infectious, contagious, epidemic, and endemic diseases.³ Matters of quarantine remained a local duty. As noted in the State Board's Annual Address in 1887:

The act creating this Board conferred little or no power; and it is perhaps legitimate to infer that the intention was that its work should be educational . . . The Board appointed under this act, after carefully searching for its powers, conferred by the act, discovered that under ordinary circumstances it simply had none to speak of . . . The main object sought seems to be that the people may be instructed and informed in all matters bearing on the prevention of disease and the preservation of health.⁴

In 1889, S.B. 471 of the 68th General Assembly granted the State Board the authority to make quarantine and sanitary rules and regulations.⁵ Ohio confronted a small-pox outbreak that year. According to the State Board's annual report to the Governor from 1889, the village of New Washington issued a quarantine order, despite there not being a case of small-pox within two miles of the village. The State Board conducted an investigation and classified the village's actions as a "most senseless and useless quarantine," noting that experience and those of other states in response to epidemic disease:

[P]oints to the necessity of vesting in some central body the power to regulate and adjust matters relating to quarantine. We are pleased to report that the Ohio State Board of Health, by an act of the last General Assembly, has been granted full power to enforce and regulate quarantine measures, and hereafter

² Ohio Association of Boards of Health, Orientation Guide (August 2018) at 8, http://aohc.net/aww/AOHC/asset_manager/get_file/261158.

³ Section 2, S.B. 90 of the 67th General Assembly.

⁴ Second Annual Report of the State Board of Health, of the State of Ohio, to the Governor of the State of Ohio, for the year ending October 31, 1887, available at <https://babel.hathitrust.org/cgi/pt?id=osu.32435054353271&view=1up&seq=7>.

⁵ Section 2, S.B. 471 of the 68th General Assembly.

interruptions to commerce shall be the least possible consistent with necessary precautions to prevent the spread of diseases.⁶

In 1893, H.B. 1149 of the 70th General Assembly further clarified the State Board's authority in matters of quarantine, amending the law to the following:

The state board of health shall have supervision of all matters relating to the preservation of the life and health of the people of the state. The board shall have supreme authority in matters of quarantine, and may declare and enforce it when none exists, may modify, relax, or abolish it when it has been established.⁷

This 1893 language has undergone few changes since its enactment. In 1917, the State Board of Health was abolished by S.B. 101 of the 82nd General Assembly and replaced with a Commissioner of Health and a four-member Public Health Council, known collectively as the State Department of Health. In 1921, H.B. 249 of the 84th General Assembly shortened the name of the State Department of Health to simply "the Department of Health." At the same time, the title "Commissioner of Health" was changed to "Director of Health" and the Director became the chairperson of the Public Health Council.⁸

The most recent substantive changes to the Department of Health's authority over matters of quarantine occurred in 2004. In addition to its authority over matters of quarantine, H.B. 6 of the 125th General Assembly added authority over matters of isolation.⁹ It also changed the reference to the Department's authority over matters of quarantine from having "supreme" authority to "ultimate" authority. This legislation was enacted post-9/11 to address concerns about the state's ability to respond to bioterrorism.

Power to issue orders

In 1893, H.B. 1149 of the 70th General Assembly also granted the State Board of Health the power to "make special or standing orders or regulations for the prevention of the spread of contagious or infectious diseases."¹⁰ This power has not been altered substantively since its enactment.

⁶ Fourth Annual Report of the State Board of Health, of the State of Ohio, to the Governor of the State of Ohio, for the year ending October 31, 1889, available at <https://babel.hathitrust.org/cgi/pt?id=osu.32435054353081&view=1up&seq=7>.

⁷ Section 2, H.B. 1149 of the 70th General Assembly.

⁸ The Public Health Council was abolished in 2012 in H.B. 487 of the 129th General Assembly, and all of the Council's responsibilities were transferred to the Director of Health.

⁹ R.C. 3701.13, H.B. 6 of the 125th General Assembly.

¹⁰ See supra note 7.

Note on R.C. 3701.14

While R.C. 3701.13 has been the primary focus of inquiry regarding the Director of Health's authority during a pandemic, it is important to note that R.C. 3701.14 also gives the Director related duties. That section requires the Director to "investigate or make inquiry as to the cause of disease or illness, including contagious, infectious, epidemic, pandemic, or endemic conditions, and take prompt action to control and suppress it." As described above, this authority has its origins in S.B. 90 of the 67th General Assembly, the 1886 legislation that created the State Board of Health.¹¹

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¹¹ See supra note 3.