

PUBLIC HEALTH - CONTAGIOUS DISEASES - Power of said Board of Health to alter regulations for exclusion from attendance at public schools on account of.

September 14, 1934



State Board of Health of Missouri,
Jefferson City, Missouri.

Gentlemen:

Attention Herman S. Gove, M.D.
Medical Licensure

A request for an opinion has been received from you under date of March 23, 1934, such request being for an opinion on the issues raised by the following letter dated March 17, 1934, from O. P. Hampton, Health Commissioner of University City, Missouri, to Dr. Emmett P. North, President Missouri State Board of Health:

"For some time the University City Board of Health has been concerned with Part C under Duties of School Authorities in Section 4 of Book 4 of Rules and Regulations of the State Board of Health of Missouri which has to do with the control of communicable diseases. For your information I quote this section.

'Diseases in Home -- No teacher, pupil, or employee shall be permitted to attend school while residing in home or institution where there exists any of the following diseases in a communicable stage as defined for each disease in Section VII: Cholera, diphtheria, measles, meningococcus meningitis, plague, poliomyelitis, scarlet fever, smallpox, typhus fever, whooping cough, yellow fever.'

We believe that you will agree that this rule is somewhat obsolete when it is made to apply to Measles and Whooping Cough, especially the former. According to the State Statutes as outlined in the same book of the Rules and Regulations, cities of a population under 75,000 are required to follow the State Board of Health rules and regulations while cities over 75,000 are allowed to make their own rules and regulations for the control of communicable diseases. Therefore we in University City are confronted with the following problem. An immune child, that is, one who has

"previously had Measles or Whooping Cough, may continue to attend school from his own home when one of these diseases exists in that home if he resides in St. Louis (a City over 75,000) but he cannot attend school from his own home and must either live elsewhere or miss school while a case of Measles or Whooping Cough exists in his home, if he resides in University City (a City under 75,000). Under date of January 26, 1934, I corresponded with Dr. McGaugh requesting that he give us permission to disregard the above paragraph and make our own regulations regarding the two above mentioned diseases. In his reply Dr. McGaugh agreed that this rule was obsolete but stated that we must continue to abide by it until the State Board of Health had seen fit to revise it. Therefore you can understand that by abiding by this rule, and we have done so, we are causing needless inconvenience to the citizens of our City.

Therefore the University City Board of Health has instructed me to write to you to request that this rule be revised as soon as possible or that cities such as ours with organized health departments be given permission to disregard it. We would appreciate a reply from you."

Revised Statutes Missouri 1929, Section 9016, provides as follows:

"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."

Since by this statute the Board of Health is allowed to designate such diseases as it considers infectious, contagious, communicable or dangerous in their nature, and since it authorizes the Board to make and enforce rules to prevent the spread thereof, it would seem clear that if the Board of Health had adopted a rule designating the diseases such as measles or whooping cough as contagious to the extent that it seemed necessary to exclude from attendance at public school any pupil in whose home either of such diseases

existed, and if the Board subsequently decided that such exclusion was not necessary on account of the disease not being so contagious in some or all cases, then the Board could amend its rule so as to remove such ban in whole or in part as to cities having populations of 75,000 inhabitants or less. (Revised Statutes Missouri 1929, Section 9029)

Some confusion might be aroused by Revised Statutes Missouri 1929, Section 9208, which provides in part as follows:

"It shall be unlawful for any child to attend any of the public schools of this state while afflicted with any contagious or infectious disease, or while liable to transmit such disease after having been exposed to the same. For the purpose of determining the diseased condition, or the liability of transmitting such disease, the teacher or board of directors shall have power to require any child to be examined by a physician or physicians, and to exclude such child from school so long as there is any liability of such disease being transmitted by the same."

On its face this statute would seem to leave a decision as to what pupils should be excluded from attendance at the public schools on account of the liability of communicating contagious diseases, to the several Boards of Directors of school districts. However, Revised Statutes Missouri 1929, Section 9028, which provides in part as follows:

"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."

shows that such local rules and regulations of Boards of Directors of school districts would be superseded by the rules promulgated by the State Board of Health and that the latter would control in case of a conflict.

In conclusion, it is our opinion that as to a rule or regulation of the State Board of Health designating certain diseases as sufficiently contagious to require exclusion from the public schools of any pupil in whose home such diseases might exist, that the Board would have authority under the statutes to alter such rule or regulation so as to remove such ban in whole or in part if it

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reasonably felt that the facts warranted such removal.

Very truly yours,

EDWARD H. MILLER

ASSISTANT ATTORNEY GENERAL

APPROVED:



(Acting) ATTORNEY GENERAL