

CITIES: City of the third class may require all persons handling food to take a physical examination.

6-26
June 22, 1935



Mr. George A. Spencer
City Attorney
Columbia, Missouri

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office, which reads as follows:

"We have a proposition here in the City of passing an ordinance requiring all persons handling food to have a physical examination at their own expense. I am wondering if you would be kind enough to give me an opinion as to whether the City can make this requirement or not."

Section 6803 Revised Statutes Missouri 1929, which is applicable to the City of Columbia, specifically gives the mayor and council of cities of the third class the power to pass ordinances for the benefit of the health of the inhabitants. Said section reads as follows:

"The mayor and council of each city governed by this article shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the Constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of

trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same."

Section 6807 Revised Statutes Missouri 1929, provides, in part:

"The council may make regulations and pass ordinances for the prevention of the introduction of contagious diseases into the city, * * * * *."

43 Corpus Juris, Section 207, page 207, states the law, in regard to a city's right to pass ordinances for the preservation of the health of the inhabitants thereof, as follows:

"The preservation of the health of the population is uniformly recognized as a most important municipal function. It is not only the right but the duty of a municipal corporation possessing the police power to pass such regulations as may be necessary for the preservation of the health of the people; * * * * *."

Section 446, at page 372 of the same Volume, states the law as follows:

"Municipal corporations may require that persons engaged in handling food products offered for sale subject themselves to medical examinations, and may prohibit the employment of persons suffering with infectious or contagious diseases."

The case of Langley v. City of Dallas 252 S. W. 203, was an injunction to restrain the enforcement of an ordinance

which required all those engaged in operating food establishments, including grocery stores, to have medical examinations of themselves and their employees made at intervals of not more than six months. The court upheld the validity of the ordinance and refused the injunction. At l. c. 203 and 204, the court said:

"The charter grants the city the power 'to enact and enforce ordinances necessary to protect health, life, and property, * * * to protect the lives, health, and property of the inhabitants of said city; * * * and it shall have and exercise all powers of municipal government not prohibited by this charter, or by some general law of the state of Texas, or by the provisions of the Constitution of Texas.' This charter language is an express delegation of authority to enact the ordinance. It passes to the municipality the inherent police power to regulate the sale of food, including the power to regulate the places of such sales and the power to impose reasonable restrictions and requirements upon those who personally handle food products at such places.

The city having been expressly clothed by the Legislature with the power to pass the ordinance, its act in passing it must be accorded the dignity and respect to be ascribed to any legislative act expressing the inherent police power of government. The legislative right and power to regulate the sale of articles of food is well established and now universally recognized. Such legislation does not transcend the inhibitions of constitutions against depriving citizens of privileges, immunities, and property without due process of law. Persons and property are subjected to restraints and burdens by it, but the presumption is that for the restrictions thus imposed they are compensated by the benefits and securities derived therefrom by the public in general. Furtherance of the protection of public health in a large

city is a paramount function of the municipal government, especially when the municipality receives the authority expressed by the charter provision above quoted.

The ordinance complained against is not patently arbitrary. We cannot say from the general knowledge or common experience of mankind, nor by any other proper test, that the ordinance inflicts an unreasonable and unnecessary destruction of either property or personal rights upon those to whom it applies. In such circumstances courts cannot undertake to determine the question of the necessity for the regulations imposed. That question, under these conditions, is one of legislative policy belonging exclusively to the board of commissioners.

The ordinance applies uniformly and without distinction or discrimination to all those of the classes affected and regulated by it in the interest of the public health, and hence does not contravene the constitutional provision for the equal protection of the law.

The ordinance has been held to be a valid and constitutional enactment by our Court of Criminal Appeals. *Ex parte Vaughan* (Tex. Cr.App.) 246 S. W. 373. Also see *Hanzal v. City of San Antonio* (Tex. Civ. App.) 221 S.W. 237. In this case an ordinance of a similar nature was upheld by the San Antonio Court of Civil Appeals, and the theory and principle which sustain such ordinances as that here under consideration are fully treated."

CONCLUSION

In view of the above, it is the opinion of this Department that an ordinance passed by a city of the third

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class, requiring all persons handling food to take a physical examination at their own expense, would be a valid exercise of such city's power to preserve the health of the inhabitants of such community and to prevent the introduction of contagious diseases into said city.

Very truly yours,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

JET:LC