CHAPTER XIII

NUISANCES AND SANITATION

NUISANCE control and maritime quarantine were the earliest and for many years the paramount activities of public health officials in North America. Legislation against nuisances was enacted as early as 1692 in both the Province of South Carolina and the Massachusetts Bay Colony. These statutes, dealing with the keeping of swine, the cutting of noisome weeds, and the location of slaughterhouses and other unpleasant trades, apparently were intended to promote civic comfort rather than health, but in 1704 a law was adopted in South Carolina for the express purpose of preventing infections that were then thought to be (and are now known not to be) due to air polluted by the filth of garbage and slaughterhouses.[1]

Although nuisance control was the foundation of sanitary administration, the modern sanitarian properly regards most nuisances as factors of minor significance to the public health.[2] There are, of course, nuisances that are important and some that are serious as public health problems, but the great bulk of these annoyances and offenses do not appreciably affect the health of the people.

The Definition of a Nuisance

Despite the vast amount of jurisprudence that has been devoted to nuisances, real and alleged, a precise legal definition of a nuisance is difficult of formulation. Blackstone said that it was "whatsoever unlawfully annoys or does damage to another," and elsewhere he defined it as "anything that worketh hurt, inconvenience or damage."[3] Sir Frederick Pollock described a legal nuisance as "the wrong done to a man by unlawfully disturbing him in the enjoyment of his property, or, in some cases, in the exercise of a common right."[4]

Every person is entitled to a reasonable enjoyment of life and property, but he must so use his own as not to injure others: *sic uteri tuo non alienum laedas.* As ably stated by Parker and Worthington in their

1. E. C. Tandy, The regulation of nuisances in the American colonies, *Am. J. Pub. Health,* 13:810, October 1923.

2. C. V. Chapin, Nuisance prevention a hindrance to disease prevention, *Am. J. Pub. Health,* 14:1, January 1924.

3. 3 *Blackstone's Commentaries* 5, 216.

4. Quoted in Webster's Dictionary.

treatise (1892) on the law of public health and safety, in which they devote 90 pages to the subject of nuisances:

> Every person is absolutely bound so to conduct himself, and so to exercise what are regarded as his natural or personal rights, as not to interfere unnecessarily or unreasonably with other persons in the exercise of rights common to all citizens. Every breach of this obligation constitutes a nuisance. Such has always been the law; the principle has been invariable.[5]

A nuisance, therefore, may be said to be anything which annoys, gives trouble, or causes vexation. The term extends to everything that endangers life or health, gives offense to the senses, violates the laws of decency, or obstructs the reasonable and comfortable use of property.[6]

Anything that endangers health is a nuisance, but the converse is not true. There are innumerable conditions, actions, and situations which legally are nuisances but which do not have any direct or indirect effect upon public or personal health. The jurisdiction of public health authorities over nuisances extends only to those matters that actually endanger health, although health departments usually are plagued with numerous complaints and demands for action in instances of alleged health nuisances that have no substantial relation to the public health.

Health officials are generally required by law to take suitable action in all cases of real public health nuisances, but they are not bound to deal with nuisances that are unrelated to the public health. Their powers over nuisances may, in fact, be limited by law to those that are injurious to public health.[7] What action, if any, should be undertaken in such instances and in borderline cases is a question of administrative procedure and of political or civic expediency, diplomacy, and strategy.

The Classification of Nuisances

A nuisance may be public, private, or mixed. A public nuisance is one that affects more than one individual or family, or one that annoys or injures the people as a whole. "Common or public nuisances," wrote Blackstone, "are offenses against the public order or economical regimen of the state, being either the doing of a thing to the annoyance

5. L. Parker and R. H. Worthington, *The Law of Public Health and Safety*, Albany, Bender, 1892.

6. 20 *Ruling Case Law* 380. See article on nuisances in the *Encyclopedia of the Social Sciences*, Vol. 11, New York, Macmillan, 1933.

7. *Rowland* v. *N.Y. Stable Manure Co.* (1917). 88 N.J. Eq. 168, 101 A. 521.

of the king's subjects or the neglecting to do a thing which the common good requires."[8] An example of a public nuisance is an open privy, the contents of which are polluting the water supply used by an entire community or by a considerable portion of the community.

A private nuisance is one that affects only one person. An example is a spite fence erected by one person to shut out light and air from another. Private nuisances do not concern public health authorities, who have no jurisdiction over such offenses.

When a public nuisance also causes special and peculiar damage to an individual, it becomes a private as well as a public nuisance, and is then known as a mixed nuisance. An example would be a factory which emits harmful chemical fumes that disturb and endanger an entire neighborhood or area and which also cause particular damage to an individual householder in the immediate vicinity.

Nuisances may likewise be classified as nuisances *per se*, or *in esse*, and as nuisances *per accidens*, or *in posse*. Thus, some conditions, such as brothels, carriers of disease, and sources of pollution, are by their very nature nuisances. Other conditions, such as hospitals, pesthouses, trades and industrial works, animals, etc., are not *per se* nuisances but may become so by virtue of their location, manner of operation, and various other factors and circumstances. It has been held, for example, that a person sick with an infectious disease is not a nuisance when confined to his own home so as not to endanger others,[9] but such a person would become a public health nuisance if he walked the streets of a community, attended school, or was present at an assemblage where other persons might contract the disease.

A nuisance may also be classified as a nuisance *prima facie*, that is, presumed to be a nuisance but capable of being proved not to be. Thus, in many jurisdictions a slaughterhouse is *prima facie* a nuisance. Such establishments were formerly thought to be dangerous to health, but modern science would regard slaughterhouses as offenses against comfort, peace, property values, and esthetics rather than against health.

A certain condition may be a nuisance because it was a nuisance at common law, or it may be a nuisance because it has been declared to be a nuisance by legislative enactment. Smallpox was, and is, a nuisance at common law, but noise and smoke were not, whereas excessive smoke and unseemly noises[10] that disturb the peace have often

8. 4 *Blackstone's Commentaries* 166.

9. *Boom* v. *Utica* (1848), 2 Barb. (N.Y.) 104.

10. See C. P. McCord, The Abatement of Noise, *J.A.M.A.*, 123:476, October 23, 1943.

been made nuisances by modern legislation. The same may be said of privies in sewered communities. Legislatures have the right to denounce certain acts and conditions as nuisances, and to exempt from this category other acts and conditions that were nuisances at common law, but all such statutory declarations must be within constitutional limitations and are subject to critical review by the courts.

The mere declaration by legislative bodies that certain conditions are or are not nuisances does not necessarily make them so. The courts will, however, be liberal in upholding such pronouncements by state legislatures, but will be more strict in adjudicating municipal ordinances and board of health regulations regarding nuisances. Where, for example, it was declared in a municipal ordinance that every hospital for the treatment of contagious and infectious diseases was a nuisance, the enforcement of this ordinance against a properly conducted private hospital for the tuberculous was enjoined by the courts on the grounds that the ordinance was unreasonable.[11] A hospital is not *per se* a nuisance, and cannot be declared to be one unless so conducted, or possibly so located, as to be an actual menace to the health, comfort, and welfare of the public. It has been held, however, that a venereal disease clinic, patronized by large numbers of persons of all classes, is a nuisance when located in a residential neighborhood.[12] In this case the Georgia Supreme Court pointed out that a nuisance may consist merely of the right thing in the wrong place, regardless of other circumstances.

Determination of a Nuisance

Administrative control over nuisances that are hazardous or injurious to the public health is usually delegated by state law to local health authorities, the state health department assuming jurisdiction only in cases where a nuisance affects the people of more than one community or is concerned with state lands or waters.

Whether a nuisance exists or not is always a question of fact, and it is a fact that should be determined by a board of health, where there is such a board, rather than by the health officer. A mere declaration by an administrative official, such as a health officer, that a thing is a nuisance does not make it so, and the assertion and the necessity

11. *San Diego Tuberculosis Ass'n* v. *City of East San Diego* (1921), 186 Cal. 252, 200 P. 393, 17 A.L.R. 513. *Cook* v. *City of Fall River* (1921), 239 Mass. 90, 131 N.E. 346, 18 A.L.R. 119. *Ayars* v. *Wyoming Valley Hospital* (1922), 274 Pa. 309, 118 A. 426. *City of Wilmington* v. *Turk* (1925), 14 Del. Ch. 392, 129 A. 512. *Jardine* v. *City of Pasadena* (1926), 199 Cal. 64, 248 P. 225, 48 A.L.R. 509.

12. *Benton* v. *Pittard* (1944), 197 Ga. 843, 31 S.E. (2d) 6, 153 A.L.R. 968.

for any ensuing action must be capable of being proved in court. "Whoever abates a nuisance," said the Court of Appeals of New York, "unless acting under court order, does so at his peril, and must prove the nuisance."[13]

As an administrative official subject to a higher authority, a health officer can merely execute the orders of a board of health or other governing body in coping with nuisances. He may issue warnings to citizens regarding such conditions and use persuasion to bring about their correction, but, unless the charter of the municipal corporation which he serves vests in him as health commissioner special authority, he cannot usurp the quasi-judicial and quasi-legislative functions of the board of health and issue direct orders for the declaration and abatement of nuisances or take summary measures without the sanction of the board. A health officer may, however, be given a certain amount of general authority to deal with various classes and types of nuisances that may require immediate action for the protection of the public health. Such authority may be conferred by an ordinance, regulation, resolution, or order.

When the existence of a nuisance is reported by a health officer to a board of health and the board decides to take action, the person who is maintaining the nuisance should be cited to appear at a hearing before the board and given an opportunity to defend himself.[14] The board may then order suitable action, which will be carried out by the health officer as its executive officer.

If the nuisance is of such a character that public health would be endangered by any delay in its abatement, then immediate action may be taken by the health officer, but the necessity for such action must be capable of proof. The property owner is still entitled to a hearing after the action, and if it appears that valuable property has been destroyed or damaged without adequate cause, he is entitled to reasonable compensation.[15]

Suitable action may be taken against things that are likely to become nuisances as well as against those that already are nuisances.[16]

13. *People ex rel. Copcutt* v. *Board of Health* (1893), 140 N.Y. 1, 35 N.E. 320, 23 L.R.A. 481, 37 A.S.R. 522.

14. *Board of Health* v. *Rulofson* (1923), 98 N.J.L. 304, 120 A. 328.

15. *Miller* v. *Horton* (1891), 152 Mass. 540, 26 N.E. 100, 10 L.R.A. 116, 23 A.S.R. 850. *Lowe* v. *Conroy* (1904), 120 Wis. 151, 97 N.W. 942, 66 L.R.A. 907, 102 A.S.R. 983, 1 Ann. Cas. 341.

16. *Board of Health* v. *Schmidt* (1914), 83 N.J. Eq. 35, 90 A. 239.

Responsibility for Nuisances

The person who creates, maintains, continues, or permits a nuisance, either on his property or by his conduct, is responsible for it. A tenant is responsible for a nuisance on property occupied by him unless the nuisance is caused directly by an act of the owner. Sometimes more than one person may be liable for a specific nuisance, as the person who creates it and also another person who continues it. An owner or occupier of property is responsible for nuisances caused by his agents, servants, or employees while acting in the course of their employment.

When the fact of a nuisance has been established, there is no defense to it. Motive does not enter into the situation, and negligence is no excuse. Lack of pecuniary ability to correct the condition likewise fails to excuse the transgressor. No one can obtain a prescriptive right to maintain a nuisance, no matter how long the condition may have endured without complaint or abatement. Time does not sanction or extenuate a nuisance, and a nuisance continued is a fresh nuisance every day of its duration.[17] A license or permit to conduct a trade or business or to perform an act does not sanction the commission of a nuisance.

A municipal corporation is fully as responsible for creating or maintaining a nuisance as is an individual, but only when the nuisance arises out of a corporate or proprietary function of the municipality. Thus, a piggery established by a city in order to dispose of municipal garbage has been held by the courts to be a nuisance, the operation of which would be enjoined for the comfort of citizens living in the vicinity, which in this case was beyond the city limits.[18]

Garbage disposal is generally considered to be a corporate or proprietary duty of a municipality,[19] although in some states it has been held to be a governmental responsibility.[20] A municipal corporation

17. *Conestee Mills* v. *City of Greenville* (1931), 160 S.C. 10, 158 S.E. 113, 75 A.L.R. 519. *Kane* v. *Lapre* (1943), 69 R.I. 330, 33 A. (2d) 218.

18. *Trowbridge* v. *City of Lansing* (1929), 237 Mich. 402, 212 N.W. 73, 50 A.L.R. 1014.

19. *O'Brien* v. *Town of Greenburgh* (1933), 268 N.Y.S. 173, 239 App. Div. 555; affirm. in 266 N.Y. 582, 195 N.E. 210. *Lambert* v. *City of Port Arthur* (Tex. 1929), 22 S.W. (2d) 320.

20. *Curry* v. *City of Highland Park* (1928), 242 Mich. 614, 219 N.W. 745. *Jones* v. *City of Phoenix* (1925), 29 Ariz. 181, 239 P. 1030. *Oklahoma City* v. *Baldwin* (1929), 133 Okla. 289, 272 P. 453. *Ashbury* v. *City of Norfolk* (1929), 152 Va. 278, 147 S.E. 223. *Baumgardner* v. *City of Boston* (1939), 304 Mass. 100, 23 N.E. (2d) 121.

is usually not liable for a nuisance resulting from the exercise of a governmental duty, such as a procedure undertaken under its police power for the protection of the public health.

It has been held on numerous occasions that a municipality is responsible for a nuisance caused by the operation of a sewage disposal plant or the discharge of sewage into streams or on lands, since this is, in general, a corporate function.[21]

An officer or employee of a governmental body may be held to be individually liable for a nuisance, if the condition is caused by acts that are beyond the scope of his authority and represent malfeasance or nonfeasance, and he may be liable, of course, if he is acting in a private capacity.

Although the political agencies of the State may be responsible for nuisances under certain conditions,[22] the State itself as the sovereign power is not responsible to individuals for nuisances and cannot be sued by individuals without its express permission. One State may, however, bring action against another State in the United States Supreme Court for infringement of its rights or those of its citizens. Thus, actions have been brought by one State against another State, or against a city in another State, for pollution of waters with sewage or garbage.[23]

Remedies against Nuisances

Several legal remedies are available against nuisances, including: 1) a suit at law for damages; 2) a suit in equity to enjoin or abate the nuisance; 3) summary abatement in certain cases; and 4) imposition of a penalty or revocation of a license for violation of a law or ordinance concerning nuisances.

Whenever injury is caused by a nuisance, the aggrieved party may sue for damages and, if actual damage can be proved, may recover judgment. Such suits may be brought by individuals, private corpora-

21. *Freedmen* v. *Borough of West Hazleton* (1929), 297 Pa. 58, 146 A. 564. *Princeton* v. *Pool* (Ky. 1916), 188 S.W. 758. *Mitchell Realty Co.* v. *West Allis* (1924), 184 Wis. 352, 199 N.W. 390, 35 L.R.A. 396. *Oklahoma City* v. *Eylar* (1936), 177 Okla. 616, 61 P. (2d) 649. See Chapter XVII, on Liability, page 283.

22. In *Parsons* v. *Town of Smithtown* (1936), 288 N.Y.S. 470, 160 Misc. 103, the state mental hygiene department was held to have no special privileges in discharging sewage into a stream in violation of a local ordinance, which was sustained as valid.

23. *Missouri* v. *Illinois* (1901), 180 U.S. 208, 21 S. Ct. 331, 45 L. Ed. 497. *New York* v. *New Jersey* (1921), 256 U.S. 296, 41 S. Ct. 492, 65 L. Ed. 937. *State of New Jersey* v. *City of New York* (1931), 284 U.S. 585, 51 S. Ct. 519.

tions, and municipal corporations, but an individual cannot sue for damages for a public nuisance unless it is also a private nuisance causing special harm to him. When a private nuisance is continued, a new cause of action can be maintained for each day that it is suffered to remain unabated.[24] The measure of damages depends, of course, upon the extent of the injury, higher awards being made in cases of permanent damage than in cases of temporary injury.

Inasmuch as damage suits are often inadequate remedies, since they may produce compensation but do not necessarily cause abatement of the nuisance, the second remedy, that of equitable injunction, may be invoked. If the existence and injurious nature of a nuisance is proven, a court of equity will issue an order enjoining its continuance and ordering its abatement. An injunction will not be granted, however, where there is an adequate remedy at law.

An individual may secure injunctive relief against a private nuisance, while the State, a municipal corporation, or a health department may take similar action through its law officers against public nuisances. It has been held, for example, that the State can enjoin the unlicensed practice of medicine as a public nuisance, where such practice is detrimental to the public welfare and dangerous to the public health.[25] The United States itself may bring an action to enjoin a nuisance, such as the operation of unpleasant fish factories in the immediate vicinity of a quarantine station.[26]

An example of the use of injunction is a case in which a State brought suit in the United States Supreme Court to enjoin an industrial plant in another State from discharging noxious fumes and gases that destroyed forests and vegetation and caused or threatened injury to the health of its inhabitants.[27] Although the value of the manufacturing plant was many times that of the property of the individuals affected, the relief was granted, as the nuisance was clearly proven.

An injunction may be secured against a municipality,[28] as well as by a municipality, in cases of nuisances, and injunctions may also be granted to prevent interference with the proper abatement of a nui-

24. *Cooley on Torts* (1907), Section 312. *Conestee Mills* v. *City of Greenville* (1931), 160 S.C. 10, 158 S.E. 113, 75 A.L.R. 519.

25. *State* v. *Compers* (1940), 44 N.M. 414, 103 P. (2d) 273.

26. *U.S.* v. *Luce* (Del. 1905), 141 F. 385.

27. *Georgia* v. *Tennessee Copper Co.* (1907), 206 U.S. 230, 27 S. Ct. 618, 51 L. Ed. 1038. *Southampton Township* v. *Scott* (1920), 91 N.J. Eq. 443, 110 A. 587. *Jersey City* v. *Coppinger* (1927), 101 N.J. Eq. 185, 137 A. 572.

28. *Lambert* v. *City of Port Arthur* (Tex. 1929), 22 S.W. (2d) 320.

sance by a municipal corporation or its agents,[29] as well as for additional violations.[30]

When an injunction is issued against a nuisance, usually a reasonable time will be permitted for its abatement unless the nuisance is of such a character that immediate action is imperative.

Since time is often of the essence in the removal of dangerous and distressing nuisances, the right of summary abatement was recognized at common law in cases of nuisances *per se*. This right still prevails, since it was not surrendered by the States when the Federal Constitution was adopted. This procedure may be utilized by health officials in dealing with public health emergencies, but, as previously stressed, it must be employed with caution.

Before summary action to abate a nuisance is taken, notice must usually be given to the person responsible for it.[31] If, however, such notice is impossible and the public health is in jeopardy, failure to give notice may not be a fatal defect. Summary abatement by forcible entry and destruction of property is not a violation of the legal right to due process of law, if the action is justified in the interests of the public health.[32] The action must, nevertheless, be reasonable and performed with as little injury as possible.

Summary abatement of a nuisance does not preclude a later action for damages by the person affected by the abatement. The burden of proof is upon the officer abating the nuisance to show that his action was required in the interests of the public welfare and for the "greatest good of the greatest number" of people.

In ordering the abatement of a public health nuisance, a board of health cannot, as a rule, dictate that it shall be abated in a specific way, but may require only that it shall be abated in a satisfactory manner by any means that the person responsible may choose to adopt.[33] A court may uphold a board of health order for abatement of a nuisance but may modify its severity, permitting a less drastic action than

29. *Board of Health of Caldwell* v. *Shaw* (1933), 113 N.J. Eq. 507, 167 A. 869.

30. *Town of Lexington* v. *Miskell* (1927), 260 Mass. 544, 157 N.E. 598, 53 A.L.R. 808.

31. *Commonwealth* v. *Collins* (1927), 257 Mass. 580, 154 N.E. 266.

32. *Lawton* v. *Steele* (1894), 152 U.S. 136, 14 S. Ct. 499, 38 L. Ed. 338. *Sentell* v. *New Orleans R. Co.* (1897), 166 U.S. 698, 17 S. Ct. 693, 41 L. Ed. 1169.

33. *Belmont* v. *New England Brick Co.* (1906), 190 Mass. 442, 77 N.E. 504. *Purnell* v. *Maysville Water Co.* (1921), 193 Ky. 85, 234 S.W. 967, 23 A.L.R. 223. *Behnisch* v. *Cedarburg Dairy Co.* (1923), 180 Wis. 84, 192 N.W. 447. *State* v. *Strayer* (1943), 230 Ia. 1037, 299 N.W. 912.

was proposed or ordered. In cases of justifiable summary abatement, the health authorities may employ any reasonable means.

The Prevention of Nuisances

The prevention of a nuisance obviously is of greater importance to the public health than is its abatement after it has occurred. Nuisances often may be prevented by means of wise legislation which prohibits the doing of acts dangerous to the public health and provides that such acts shall be punishable offenses. If there is such specific prohibition of nuisances in a statute or ordinance or in a regulation made under authority of law, the prosecution or mere threat of prosecution for violation of the statute frequently will result in prompt and effective abatement of the nuisance. It may be more effective, for example, for a State to adopt legislation prohibiting the pollution of streams than legislation merely declaring stream pollution to be a nuisance and penalizing those guilty of the offense after it has happened. Preventive legislation of this nature has been upheld as constitutional.[34]

Pollution of Waters

The pollution of streams, lakes, and other similar waters by sewage, industrial wastes, and other filth is a public health nuisance,[35] which may be enjoined or may give rise to a suit at law for damages. Every riparian owner has the right to have a stream come to him in its natural state of purity, although proprietors on the upper reaches of the stream may make a reasonable use of it. Waters and watercourses are, furthermore, necessary as sources of municipal water supplies, and also for the propagation and existence of fish and shellfish, both for food supplies and as game.

While modern civilization demands that streams and other bodies of water be utilized for the reasonable disposal of municipal sewage, the discharge into these waters of raw sewage and industrial wastes is not a natural or proper use of them. Such sewage and wastes must be adequately purified or treated so that all dangers of infection and

34. *Northwestern Laundry Co.* v. *Des Moines* (1916), 239 U.S. 486, 36 S. Ct. 206, 60 L. Ed. 396. In *Irvine* v. *Commonwealth* (1919), 124 Va. 817, 97 S.E. 769, a law prohibiting common roller towels in public lavatories was upheld, but the lavatories of an office building were held not to be public lavatories.

35. *Stream Pollution, A digest of judicial decisions and a compilation of legislation relating to the subject,* Public Health Bulletin No. 87, U.S. Public Health Service, 1917. *Third Report of the Special Advisory Committee on Water Pollution in the U.S.,* Washington, National Resources Committee, 1939.

offense will be obviated and the public health will be protected. The State has a right, however, to discharge sewage into tidal waters, and may adopt legislation authorizing municipalities to do so.[36] Since the employment of tidal waters for this purpose is a public right, an oyster grower whose trade is damaged by city sewage in tidal waters cannot maintain an action against the city.[37]

Legislation to control pollution of streams and other waters within a State and to protect domestic water supplies is now in force in all States, and frequently has been upheld by the courts as a valid exercise of the police power.[38] State health departments, or other state agencies especially created for the purpose, are usually given the power to supervise and control municipal sewage disposal facilities and to take suitable action in cases of pollution.[39] A permit granted by a state board of health to a city to discharge sewage effluent into a river does not, however, authorize the city to commit a nuisance.[40]

The liability of municipal corporations for nuisances due to sewage is discussed at greater length in Chapter XVII, where there is also a discussion of the responsibility for diseases caused by polluted water supplies.

The State may properly require by legislation or regulation that persons who operate water supply systems shall possess certain qualifications and be licensed by the state department of health or other

36. *Cityco Realty Co.* v. *City of Annapolis* (1930), 159 Md. 148, 150 A. 273.

37. *Lovejoy* v. *City of Norwalk* (1930), 112 Conn. 199, 152 A. 210. *Darling* v. *Newport News* (1919), 249 U.S. 540, 39 S. Ct. 371, 63 L. Ed. 759.

38. *Sprague* v. *Dorr* (1904), 185 Mass. 10, 69 N.E. 344. *State* v. *Wheeler* (1882), 44 N.J.L. 88. *City of Durham* v. *Eno Cotton Mills* (1906), 41 N.C. 615, 54 S.E. 453, 7 L.R.A. (N.S.) 321. *State Board of Health* v. *City of Greenville* (1912), 86 Oh. St. 1, 98 N.E. 1019, Ann. Cas. 1913 D 52. *Bucyrus* v. *Dept. of Health* (1929), 120 Oh. St. 426, 166 N.E. 370, 2 Oh. Bar 10. *Miles City* v. *State Board of Health* (1909), 39 Mont. 405, 102 P. 696, 25 L.R.A. (N.S.) 589. *Salt Lake City* v. *Young* (1915), 45 Utah 349, 145 P. 1047. *Cooper* v. *State* (1944), 48 N.Y.S. (2d) 212.

39. *Board of Purification of Waters* v. *Town of Bristol* (1931), 51 R.I. 243, 153 A. 879. *State* v. *City of Van Wert* (1932), 126 Oh. St. 78, 184 N.E. 12. In *Danielley* v. *City of Princeton* (1933), 113 W. Va. 252, 167 S.E. 620, a law relating to a state water commission and providing for review of its findings by the circuit court was held unconstitutional as an unlawful delegation of executive power to the courts. *City of Niles* v. *Stream Control Comm.* (1941), 296 Mich. 650, 296 N.W. 713. *People ex rel. Stream Control Comm.* v. *City of Port Huron* (1943), 305 Mich. 153, 9 N.W. (2d) 41.

40. *People* v. *City of Reedley* (1924), 66 Cal. App. 409, 226 P. 408. *Barrington Hills Country Club* v. *Village of Barrington* (1934), 357 Ill. 11, 191 N.E. 239. *Dohany* v. *City of Birmingham* (1942), 301 Mich. 30, 2 N.W. (2d) 907.

governmental agency, but where one city obtained its water by contract from another city, it was held that the superintendent of the water supply system of the former need not be licensed.[41]

In order to prevent contamination of public water supplies, the State and its political subdivisions may adopt legislation or pass regulations to prohibit bathing, boating, and other activities in or on reservoirs and other sources of water supplies, whether they are on public or private lands.[42] Notice of such prohibition is a desirable procedure but is not essential if the law or regulation is published as required by the statutes.

It has also been held that a city may pass an ordinance prohibiting the sale within the city of ice manufactured outside the city unless it is made of distilled water, the ordinance in question having been adopted by the city of El Paso, Texas, to safeguard its citizens against any possible dangers from ice made from polluted water in Juarez, Mexico, where it was alleged that periodic examinations of the water supply were not made.[43] In sustaining this ordinance as a valid exercise of the police power, the state court relied upon a decision of the United States Supreme Court, which had upheld a city ordinance requiring all milk sold in the city from outside sources to be produced only from tuberculin tested cattle.[44] This decision of the United States Supreme Court likewise upholds the right of a city to summary action in seizing and destroying as a nuisance milk that is shipped to the city in violation of the ordinance.

Standards for the purity of drinking water and water for culinary purposes supplied by common carriers in interstate commerce have been promulgated by the United States Public Health Service. Appended to these standards is a Manual of Recommended Water Sanitation Practice, a valuable guide for anyone concerned with this important subject.[45]

41. *State ex rel. Department of Health* v. *City of Hoboken* (1942), 130 N.J. Eq. 564, 23 A. (2d) 587.

42. *State* v. *Quattropani* (1926), 99 Vt. 360, 133 A. 352. *Town of Cheektowaga* v. *Sts. Peter and Paul, etc. Church* (1924), 205 N.Y.S. 334, 123 Misc. 458. *Harvey Realty Co.* v. *Borough of Wallingford* (1930), 111 Conn. 352, 150 A. 60. *Bountiful City* v. *De Luca* (1930), 77 Utah 107, 292 P. 194. *Jersey City* v. *State Water Policy Comm.* (1936), 14 N.J. Misc. 10, 181 A. 873. *State* v. *Heller* (1937), 123 Conn. 492, 196 A. 337. *Willis* v. *Wilkins* (1943), 92 N.H. 400, 32 A. (2d) 321.

43. *City of El Paso v. Jackson* (Tex. 1933), 59 S.W. (2d) 822.

44. *Adams* v. *Milwaukee* (1913), 228 U.S. 572, 33 S. Ct. 610, 57 L. Ed. 971.

45. *Public Health Service Drinking Water Standards and Manual of Recommended Water Sanitation Practice, Standards Adopted by Public Health Service,*

(*Continued on next page.*)

Shellfish Sanitation

Since shellfish of all kinds may be contaminated by sewage, and when eaten may cause typhoid fever and other diseases, measures for the sanitary control of the growing and handling of oysters, clams, and other shellfish have been adopted in States bordering on tidal waters where this problem occurs.[46] The reasonable control of shellfish by state and local health departments has been upheld by the courts as a necessary and desirable sanitary procedure.[47]

Privy Sanitation

Insanitary privies have been and are fertile sources of disease. Health departments may, therefore, take proper measures to do away with such public health nuisances. On numerous occasions the courts have upheld the reasonable regulation of privies and outhouses[48] and have sustained ordinances requiring that privy vaults be removed and replaced by sanitary water closets where sewer connections are available.[49] The power of the city to prohibit and regulate privies is not limited by a contract between the city and an individual for the cleaning of privies,[50] and the suppression of privy vaults by a municipal corporation is not a deprivation of property without due process of law.[51] An annual sanitary tax on privies has also been upheld.[52]

Sept. 25, 1942, for Drinking and Culinary Water Supplied by Common Carriers in Interstate Commerce, Reprint 2440, U.S. Public Health Service, 1943.

46. H. N. Olds, Trends in shellfish sanitation, *Pub. Health Rep.,* 53:720, May 6, 1938.

47. *Comm.* v. *St. John* (1928), 261 Mass. 510, 159 N.E. 599. *Meunier* v. *Comrs. of Shell Fisheries* (1933), 54 R.I. 12, 168 A. 907. *Lovejoy* v. *City of Norwalk* (1930), 112 Conn. 199, 152 A. 210. *People* v. *Thompson and Potter* (1942), 289 N.Y. 259, 45 N.E. (2d) 432. *De Roche* v. *Osborne* (1942), 37 N.Y.S. (2d) 348.

48. *Malone* v. *City of Quincy* (1923), 66 Fla. 52, 62 So. 922. *Cartwright* v. *Bd. of Health of Cohoes* (1901), 165 N.Y. 631, 59 N.E. 1120. *Comm.* v. *Roberts* (1892), 155 Mass. 281, 29 N.E. 522, 16 L.R.A. 400. *Lavender* v. *City of Tuscaloosa* (1940), 29 Ala. App. 502, 198 So. 459. *Goodall* v. *City of Clinton* (Okl. 1945), 161 P. (2d) 1011.

49. *Harrington* v. *City of Providence* (R.I. 1897), 38 A. 1. *St. Louis* v. *Nash* (Mo. 1924), 260 S.W. 985. *St. Louis* v. *Hoevel Real Estate Co.* (Mo. 1933), 59 S.W. (2d) 617. *Nourse* v. *City of Russellville* (1935), 257 Ky. 525, 78 S.W. (2d) 761.

50. *Bowers* v. *City of Little Rock* (Ark. 1935), 77 S.W. (2d) 797.

51. *Spriggs* v. *Garrett Park* (1899), 89 Md. 406, 43 A. 813.

52. *Town of Marion* v. *Baxley* (1939), 192 S.C. 112, 5 S.E. (2d) 573.

Plumbing

Sanitary plumbing is of importance to the public health as a vast and necessary improvement over the old-fashioned privy and cesspool. Contrary to a former superstition, however, gases, exhalations, and odors from plumbing will not cause disease, although they may cause discomfort.[53] Defective plumbing may, nevertheless, give rise to disease conditions, especially when the defects are such as to cause contamination of domestic water or food supplies. A widespread epidemic of amebic dysentery occurred in 1933 and 1934 chiefly as the result of defective plumbing conditions in two hotels in Chicago, where discharges from carriers of the disease gained access to the water supply because of improper plumbing installations and cross connections.[54]

Plumbing is the subject of laws and regulations in the States and in most municipalities. In many instances, inspection of plumbing is made the duty of local health departments, although the function is properly one for the building department or other municipal departments.

Housing

Provision for adequate, sanitary housing for all the people has been stated to be an urgent public health problem.[55] From the legal point of view, health officials are concerned with housing because insanitary conditions in habitations are nuisances or otherwise endanger or are likely to endanger the public health. In the interests of the public health and general welfare, state governments may appropriate or authorize the appropriation by municipalities of monies and may accept federal grants for the purpose of furnishing improved housing conditions for their citizens. States and municipalities may also regulate tenements and slum conditions, provide for zoning, and otherwise supervise the living environment of the people.

Although housing improvement and slum clearance have been the

53. *State* v. *Smith* (1906), 42 Wash. 237, 84 P. 851, 114 A.S.R. 114, 5 L.R.A. (N.S.) 674, 7 Ann. Cas. 577. *Replogle* v. *Little Rock* (1924), 166 Ark. 617, 267 S.W. 353, 36 A.L.R. 1333.

54. H. N. Bundesen, The Chicago epidemic of amoebic dysentery in 1933, *Pub. Health Rep.*, 49:1266, October 26, 1934.

55. C.-E. A. Winslow, Housing as a public health problem. *Am. J. Pub. Health*, 27:56, January 1937. See S. C. Prescott and M. P. Horwood, *Sedgwick's Principles of Sanitary Science and Public Health*, New York, Macmillan, 1935. *Basic Principles of Healthful Housing*, Report of Committee on the Hygiene of Housing, 2d ed., New York, American Public Health Association, 1941. A city ordinance requiring cleanliness and sanitation in dwellings was upheld in *Petrushansky* v. *State* (1943), 182 Md. 164, 32 A. (2d) 696.

concern of sociologists from early times, the first broad and comprehensive legal attack on the problem was the New York Tenement House Law of 1901, which required of all first-class cities certain minimum standards of sanitation, air, light, and other essentials in housing. In 1929 New York adopted the Multiple Dwelling Law, which was sustained as valid by the New York Court of Appeals in the same year.[56] In a concurring opinion in this case, it was stated by Mr. Justice Cardozo, then on the bench of this court, that:

> The Multiple Dwelling Act is aimed at many evils, but most of all it is a measure to eradicate the slum. It seeks to bring about conditions whereby healthy children shall be born, and healthy men and women reared, in the dwellings of the great metropolis. . . . The end to be achieved is more than the avoidance of pestilence or contagion. The end to be achieved is the quality of men and women. . . . If the moral and physical fibre of its manhood and its womanhood is not a State concern, the question is, what is?

In 1934 Congress passed the National Housing Act (12 U.S.C. 1702), which has been amended from time to time. The law directed a Federal Housing Administration to encourage improvement in housing standards and conditions, to create a sound mortgage market, and to provide a system of mutual mortgage insurance. The United States Housing Act of 1937 (42 U.S.C. 1401) provided for financial assistance from the Federal Government to local public housing authorities in the development and administration of low-rent housing and slum clearance. This law, as administered by the Federal Public Housing Authority, was upheld by the United States Supreme Court in 1945.[57]

The federal agencies concerned with housing were consolidated in the National Housing Agency by the President by Executive Order of February 24, 1942. The three principal constituent units within this agency are the Federal Home Loan Bank Administration, the Federal Housing Administration, and the Federal Public Housing Administration.

A municipal ordinance regulating tourist camps, which provided that no person should remain in such a camp more than thirty days and requiring five hundred cubic feet of space for each person, has been sustained, even though a state law provided for licensing and

56. *Adler* v. *Deegan* (1929), 251 N.Y. 467, 167 N.E. 705. *Ademec* v. *Post* (1936), 273 N.Y. 250, 7 N.E. (2d) 120, 109 A.L.R. 1110. See W. Ebenstein, *The Law of Public Housing*, Madison, University of Wisconsin Press, 1940.

57. *City of Cleveland* v. *U.S.* (1945), 323 U.S. 328, 65 S. Ct. 280, 89 L. Ed. *New York City Housing Authority* v. *Muller* (1936), 270 N.Y. 233, 1 N.E. (2d) 153, affg. 279 N.Y.S. 299, 155 Misc. 681. See 130 *American Law Reports* 1069.

regulation of tourist camps and delegated the enforcement of the law to the state board of health.[58]

Insect Control

A number of dangerous communicable diseases, including bubonic plague, typhus fever, typhoid fever, Rocky Mountain spotted fever, tularemia, malaria, dengue, filariasis, yellow fever, and hookworm, may be spread by infected insects such as fleas, lice, flies, ticks, mosquitoes, and hookworms. These insects, whether actually infected or not, are public health nuisances, against which suitable measures may be taken by public health authorities.

Ordinances requiring the screening of food in order to prevent contamination by flies have been upheld,[59] as have also ordinances requiring the wrapping of bread for the same purpose.[60] In a noteworthy decision handed down by the Supreme Court of Maine in 1920, it was held that a guest was justified in leaving a hotel when flies became so numerous as to be dangerous to health.[61] In the course of this interesting opinion, the court stated:

> It is a matter of common knowledge that the common house fly has come to be regarded by the enlightened understanding, not only as one of the most annoying and repulsive of insects, but one of the most dangerous in its capacity to gather, carry, and disseminate the germs of disease. He is the meanest of all scavengers. He delights in reveling in all kinds of filth; the greater the putrescence the more to his taste. Of every vermin, he above all others is least able to prove an alibi when charged with having been in touch with every kind of corruption, and with having become contaminated with the germs thereof. After free indulgence in the cesspools of disease and filth, he then possesses the further obnoxious attribute of being most agile and persistent in ability to distribute the germs of almost every deadly form of contagion.

Since the most common breeding place of flies is in horse manure, this is also a public health nuisance. Manure may also be a source of tetanus bacilli. While it has been shown that flies can carry the germs of typhoid fever and other filth-borne diseases, most cases of these diseases are contracted in other ways. Flies are nuisances, but they are

58. *Spitler* v. *Munster* (1938), 214 Ind. 75, 14 N.E. (2d) 579, 115 A.L.R. 1395.

59. *State* v. *O'Connor* (1911), 115 Minn. 339, 132 N.W. 303, 35 L.R.A. (N.S.) 1112, Ann. Cas. 1912 D 955.

60. *State* v. *Normand* (1913), 76 N.H. 541, 85 A. 899, Ann. Cas. 1913 E 996.

61. *Williams* v. *Sweet* (1920), 119 Me. 228, 110 A. 316, 10 A.L.R. 121. See dictum in *Camfield* v. *U.S.* (1897), 167 U.S. 518.

not as serious to the public health as are *anopheles* mosquitoes which carry the protozoa of malaria, and mosquitoes of the *aedes* species which transmit yellow fever and dengue fever.

Mosquitoes have been held by the courts to be common pests dangerous to the public health[62] whose breeding places may be abated as public nuisances.[63] Many types of common mosquitoes do not carry disease, but they may, nevertheless, be nuisances, as may be other insects and vermin such as bedbugs, cockroaches, etc.

Since disease-bearing insects may be carried by airplanes, special measures to cope with these and other health hazards due to modern transportation by air may be taken by health authorities. Where such transportation is interstate or with foreign countries, sanitary control is the function of the United States Public Health Service.[64]

Animals

Animals affected with infectious diseases, such as dogs with rabies, rodents with plague, cows with tuberculosis or brucellosis, horses with glanders, sheep with anthrax, rabbits with tularemia, parrots with psittacosis, or hogs infested with trichina, are public health nuisances.[65] Dead animals are not *per se* nuisances but may become so under certain conditions. Unless dead from a disease such as anthrax or a similar dangerous malady, deceased animals are not particularly hazardous to the public health.

Other Nuisances

While an enumeration of all the things that may be nuisances would be merely an extensive list of the infinite variety of ways in which a person can be annoyed or impeded in the enjoyment of his rights, the following conditions may be mentioned as having been held by the courts to be public health nuisances under certain conditions:[66] animals, barns and stables, buildings, cemeteries, cesspools, comfort stations, dams, diseased persons, disorderly houses, dogs, dumps, dusty

62. *Towaliga Falls Power Co.* v. *Sims* (1909), 6 Ga. App. 749, 65 S.E. 844. *Cohen & Co.* v. *Rittman* (Tex. 1911), 139 S.W. 59. *Godfrey* v. *Western Carolina Power Co.* (1925), 190 N.C. 24, 128 S.E. 485. *Belton* v. *Wateree Power Co.* (1922), 123 S.C. 291, 115 S.E. 587.

63. *Yaffe* v. *City of Fort Smith* (1928), 178 Ark. 406, 10 S.W. (2d) 886. *Board of Health of Caldwell* v. *Shaw* (1933), 113 N.J. Eq. 507, 167 A. 869.

64. *Sanitation Manual for Land and Air Conveyances Operated in Interstate Traffic*, Reprint 2444, Washington, U. S. Public Health Service, 1943.

65. *People* v. *Anderson* (1934), 355 Ill. 289, 189 N.E. 338.

66. See 46 *Corpus Juris* 690, and cases cited.

trades, explosives, factories, filth, flies, food when adulterated or contaminated, fumes, garbage, gases, hospitals, insects, manure, mosquitoes, noise, pigeons, piggeries, ponds, privies, rats, refuse, rodents, sewage, sewers, slaughterhouses, smoke, spitting, urinals, water when polluted, water closets, weeds, and all kinds of offensive trades.

With the exception of diseased animals and persons, disease-carrying insects, and disorderly houses, these things are not nuisances *per se*, and they have also been held not to be nuisances under certain conditions.

Odors may be disagreeable and cause discomfort, but they are not injurious to the physical health of normal persons. Odors may be nuisances, but they are seldom, if ever, public health nuisances.[67] Garbage and refuse are likewise of inconsequential harm to the public health.[68]

67. *Gardner* v. *Internat. Shoe Co.* (1944), 386 Ill. 418, 54 N.E. (2d) 482.

68. See E. Wright, Control of nuisances, *Am J. Pub. Health*, 28:579, May 1938.