

## CHAPTER I.

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# THE PUBLIC HEALTH LAW,

BEING

CHAPTER XXV OF THE GENERAL LAWS.

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[LAWS OF 1893, CHAPTER 661.]

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### THE PUBLIC HEALTH LAW.

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### ARTICLE I.

#### STATE DEPARTMENT OF HEALTH.

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§ 1. **Short title.**— This chapter shall be known as the public health law.

New. As amended by L. 1901, ch. 29.

§ 2. **State department of health; commissioner of public health.**— The state department of health and the office of commissioner of health are hereby created. The commissioner of health shall be the head of such department. Such commissioner shall be appointed by the governor, by and with the advice and consent of the senate, and shall be a physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of his profession, and of skill and experience in public health duties and sanitary science. The term of office of the commissioner first appointed hereunder shall expire on the thirty-first day of December, nineteen hundred and four, and the term of office of the commissioner thereafter appointed shall be four years, beginning on the first day of January of the year in which he is appointed. Within twenty days after the amendment of this section takes effect, the governor shall appoint a commissioner of health as herein provided and upon the appointment and qualification of such commissioner, the terms of the members

of the state board of health and the secretary of such board shall expire.

Revised from L. 1880, ch. 322, §§ 1, 2. As amended by L. 1901, ch. 29.

**§ 3. Compensation of officers and employes.**—The commissioner of health shall receive an annual salary of three thousand five hundred dollars, and his expenses actually and necessarily incurred in the performance of his official duties, to be paid monthly on the audit of the comptroller. He may employ such clerical and other assistants as are necessary for the proper performance of the powers and duties of the department, and fix their compensation within the amount appropriated therefor by the legislature. He shall designate, in writing, one of his assistants who shall possess the powers and perform the duties of commissioner of health during his absence or inability to act, or during a vacancy in the office.

Revised from L. 1880, ch. 322, §§ 3, 5. As amended by L. 1901, ch. 29.

**§ 4. General powers and duties of commissioner.**—The commissioner of health shall take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto. He shall make inquiries in respect to the cause of disease, especially epidemics and investigate the source of mortality, and the effect of localities, employments and other conditions, upon the public health. He shall obtain, collect

and preserve such information relating to mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state. He may issue subpoenas, compel the attendance of witnesses and compel them to testify in any matter or proceeding before him and a witness may be required to attend and give testimony in a county where he resides or has a place of business, without the payment of any fees. The commissioner of health may reverse or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in his judgment affects the public health beyond the territory over which such local board has jurisdiction; and may exercise exclusive jurisdiction over all lands acquired by the state for sanitary purposes. The commissioner of health and any person authorized by him so to do, may, without fee or hindrance, enter, examine and survey all grounds, erections, vehicles, structures, apartments, buildings and places.

Revised from L. 1880, ch. 322, § 6, and L. 1885, ch. 270, § 3, subd. 10. As amended by L. 1901, ch. 29.

Article X of the general Village Law (L. 1897, ch. 414), provides for the establishment of a sewer system in villages; and section 200 requires that a map and plan of a permanent sewer system for a village shall be submitted to and approved by the state board (department) of health before such sewer or sewers shall be constructed. See Cumming and Gilbert's Village Law.

A similar provision exists for construction of sewers in towns outside of an incorporated village. See Gilbert's Town and County Officers' Manual.

See also § 21, *post*, as to powers and duties of local boards of health.

§ 5. **Duties with respect to vital statistics.**— There shall be in the state department of health a bureau of vital statistics for the registration of births, marriages, deaths and prevalent diseases, which shall be under the general charge and supervision of the commissioner of health. He shall prescribe and prepare the necessary methods and forms for obtaining and preserving such statistics, and to insure the prompt and faithful registration of the same in the several municipalities and in the state bureau. He shall from time to time recommend such forms and such amendments of law as shall be deemed necessary for the thorough organization and efficiency of registration of vital statistics throughout the state, as supervised by him. The clerical duties and safekeeping of the state bureau shall be provided for by the commissioner of health. The comptroller shall provide and furnish such stationery as the commissioner may require in the discharge of his duties. If defects exist in any registration under the supervision of a local board of health, the commissioner shall notify the local board that such defects must be amended and prevented within one month from the date of the notice. If such defects are not so amended or prevented, the commissioner shall take control of such registration and the record thereof, and enforce the rules and regulations in regard thereto, and secure a complete registration in such municipality, at the same cost to the municipality as if done by the local board, and such control shall continue until the local board

satisfies the commissioner that it will make such record and registry complete, as required by law. A copy of any record or registry in the office of the state department of health, duly certified by the commissioner to be a true copy thereof, shall be presumptive evidence in all courts and places of the facts therein stated. The commissioner of health shall prescribe and prepare the necessary methods, forms and rules regulating the issue of transfer permits, by local boards of health, for the transportation of corpses, for burial outside of the county where death occurred and the use of such permits. He shall require a coupon to be attached to every such permit to be detached and preserved by every common carrier, or person in charge of any vessel, car or vehicle, to whom any such corpse shall be delivered for transportation.

Revised from L. 1880, ch. 322, § 7. As amended by L. 1901, ch. 29.

**§ 6. Nuisances.**—The commissioner of health shall have all necessary powers to make examinations into nuisances, or questions affecting the security of life and health in any locality. Whenever required by the governor of the state, he shall make such an examination and shall report the results thereof to the governor, within the time prescribed by him therefor. The report of every such examination, when approved by the governor, shall be filed in the office of the secretary of state, and the governor may declare the matters public nuisances, which may be found and certified in any such report to be nuisances, and may order them to be

changed, abated or removed as he may direct. Every such order shall be presumptive evidence of the existence of such nuisance; and the governor may, by a precept under his hand and official seal, require the district attorney, sheriff and other officers of the county where such nuisance is maintained, to take all necessary measures to execute such order and cause it to be obeyed, and the acts of any such county officer in the abatement of any such nuisance, reasonable or necessary for such abatement, shall be lawful and justifiable and the order of the governor a sufficient protection to such officer. The expense of such abatement shall be paid by the municipality where the nuisance occurs, and shall be a debt recoverable by such municipality of all persons, maintaining it or assisting in its maintenance, and a lien and charge upon the lands upon which the nuisance is maintained, which may be enforced by a sale of such lands to satisfy the same.

Revised from L. 1880, ch. 322, § 8, and L. 1882, ch. 308. As amended by L. 1901, ch. 29.

In an action brought to restrain the city of Rochester from discharging sewage on lands of plaintiff, it appeared, that upon complaint made to the governor of the state that the discharge of sewage from Monroe avenue into Thomas' creek was a nuisance, pursuant to the provisions of the foregoing section, and upon a report on that subject by the state board of health, an order was made by the governor that such discharge of sewage was a public nuisance and directing the mayor and common council of the city to abate it in manner specified, and the common council, in compliance with such order passed a resolution and let a contract for the purpose; and it also appearing that the city had no right to increase the flow of sewage through an open ditch into which it was proposed to discharge the sewage referred to, it was *held*, that while the order of the governor was made pursuant to the statute, the duty was

devolved upon the local authorities named to abate the nuisance, and in doing so neither the statute nor the order of the governor conferred the right to impose a burden upon the lands of another without acquiring the right to do so in a lawful manner. *Vick v. City of Rochester*, 46 Hun, 607.

Under the act of 1866, which made expenses of sanitary improvements a lien upon private property, without prescribing a remedy to enforce it, it was held that the remedy must be by a bill in equity. *Gibbons v. Hamilton*, 33 How. Pr. 83.

Undoubtedly such would be the remedy under the foregoing section.

§ 7. **Overflow of water from the canals.**—Whenever water escaping or discharged from any of the canals of the state, through water gates, spillways or otherwise, shall overflow adjacent lands, or any creek or stream receiving such waters, or collect in stagnant pools along the canal or any such creek or stream to such an extent as to cause disease or sickness to the inhabitants of the vicinity, any three of such inhabitants may make a written complaint thereof under oath to the commissioner of health, setting forth the extent of the injury to the public health, so far as is within their knowledge, and the length of time the disease or sickness has existed, which shall be accompanied by a verified certificate of a practicing physician of the vicinity, stating the facts known to him, pertaining to the allegations of the complaint. Upon receipt of such complaint, the commissioner of health shall forthwith examine into the facts and circumstances therein set forth, and may call on the state engineer to make such surveys as they may require for their information, who shall make the same without delay, and if such commissioner is satis-



fied that such disease or sickness exists, and is caused by waters of the canal escaping or discharged therefrom, he shall so report to the superintendent of public works, without unnecessary delay, who shall forthwith abate the cause of such disease or sickness.

Revised from L. 1883, ch. 291, §§ 1, 2. As amended by L. 1901, ch. 29.

**§ 8. Employment of local boards and experts.**—Whenever requested by the commissioner of health, any city board of health in this state may appoint one of its members to act with and assist the commissioner during the examination of any nuisance, or for the purpose of determining whether a public nuisance exists. Such representative may take part in such examination, and sit with the commissioner during the conduct thereof, but the final determination of the questions involved shall rest solely with the commissioner. The commissioner may from time to time employ competent persons to render sanitary service, and make or supervise practical and scientific investigations and examinations requiring expert skill, and prepare plans and reports relative thereto.

Revised from L. 1880, ch. 322, §§ 9, 10. As amended by L. 1901, ch. 29.

**§ 9. Examination and inspection of public works.**—All persons having the control, charge or custody of any public structure, work or ground, or of any plan, description, outline, drawing or chart thereof or relating

thereto, made, kept or controlled by or under any public authority, shall permit and facilitate the examination, inspection and copying thereof by the commissioner of health, or by any person authorized by him to make such examination or inspection or such copies.

Revised from L. 1880, ch. 322, § 10. As amended by L. 1901, ch. 29.

§ 10. **Acquisition of land.**— If the commissioner of health or the health officer of the port of New York shall certify to the commissioners of the land office that by reason of sudden emergency the acquisition of any land is immediately necessary for quarantine or other purposes to prevent great danger to the public health, and such commissioners are satisfied that such action is necessary such commissioners may acquire by purchase or by condemnation, in the name of the people of the state of New York, such land as in their judgment is necessary and suitable for such purposes.

New. 1893. As amended by L. 1901, ch. 29.

§ 11. **Power of commissioner where municipality fails to establish board of health.**— If any municipal corporation, authorized by law to establish a local board of health, shall omit to do so, the commissioner of health may, in such municipality, exercise the powers of a local board of health and appoint a health officer thereof and fix his duties and compensation. The compensation of such health officer and the expenses lawfully incurred by him and by the commissioner of health in such mu-

nicipality shall be a charge upon and paid by such municipality until such time as a local board of health shall be established therein, whereupon the jurisdiction of such health officer and of the commissioner of health conferred by this section shall cease.

New. 1893. As amended by L. 1901, ch. 29.

§ 12. **Annual report.**—The commissioner of health shall annually, on or before the first Monday in February make a written report to the governor upon the vital statistics and sanitary conditions and prospects of the state. Such reports shall set forth the action of the department and of its officers and agents and the names thereof during the past year, a detailed statement of all moneys paid out by or on account of the department, and the manner of its expenditure during the year, and other useful information, and shall suggest any further legislative action or precaution deemed necessary for the better protection of life and health.

Revised from L. 1880, ch. 322, § 11. As amended by L. 1901, ch. 29.

§ 13. **Tenement houses.**— The commissioner shall have power to examine into the enforcement of the laws relating to tenement houses in any city of the first class. Whenever required by the governor, he shall make such an examination and shall report the results thereof to the governor within the time prescribed by him therefor.

Added by L. 1901, ch. 283.