

ARTICLE II.

LOCAL BOARDS OF HEALTH.

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§ 20. Local boards of health.— There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state. In the cities except New York, Brooklyn, Buffalo, Albany and Yonkers, the board shall consist of the mayor of the city, who shall be its president, and, at least six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. The board shall appoint a competent physician, not one of its members, to be the health officer of the city. In vil-

lages the board shall consist of not less than three nor more than seven persons, not trustees of the village, who shall be appointed at the first meeting of the board of trustees of such village, after the next annual election of the village; the members of said board of health shall at their first meeting divide themselves by lot into three classes, whose terms of office shall expire respectively in one, two and three years from the annual election held prior to their appointment; from and after the appointment of said board as above provided, the appointment of the successors of said members shall be made immediately after the annual elections of said village and shall continue in office until their successors are appointed unless removed therefrom; provided, however, that upon failure to appoint such board of health at such first meeting such appointment may be made at any subsequent meeting, in the event of no appointment having been made by the county judge as hereinafter provided. Every such village board shall elect a president and appoint a competent physician, not a member of the board, to be the health officer of the village. In towns the board of health shall consist of the town board and another citizen of the town of full age biennially appointed by the town board at a meeting thereof after each biennial town meeting for the term of two years from and after such town meeting and until his successor is appointed. Such board of health shall annually appoint a competent physician to be the health officer of the town. If the proper au-

thorities shall not fill any vacancies occurring in any local board within thirty days after the happening of such vacancy, the county judge of the county shall appoint a competent person to fill the vacancy for the unexpired term, which appointment shall be immediately filed in the office of the county clerk, and a duplicate thereof filed with the clerk of the municipality for which such appointment is made. Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state board of health. The term "municipality", when used in this article, means the city, village or town for which any such local board may be or is appointed.

Revised from L. 1885, ch. 270, §§ 1, 2. As amended by L. 1894, ch. 268; L. 1895, ch. 584, § 1; L. 1897, ch. 282, § 1, and L. 1902, ch. 339.

As to power of state commissioner of health to act where municipal authorities fail to establish a local board of health under the provisions of above section, see § 11, *ante*.

In case the local authorities fail to comply with the provisions of this section, any citizen of the municipality may apply to the court for a mandamus to compel the trustees to appoint a board of health, it being a fixed and established rule of this state that every citizen has a right to compel the performance by public officers, of the duty imposed upon them of executing the laws of the state, which are enacted for the benefit of the community. *People ex rel. Boltzer v. Daley et al.*, 37 Hun, 461.

Under section 20 of the Public Health Law the common council is vested with discretion in the matter of appointing the nominees of the mayor, and cannot be compelled to do so by mandamus. *Matter of City of Rensselaer*, 31 Misc. 512; 64 N. Y. Supp. (98 St. Rep.) 704.

The determination of a county judge as to whether a vacancy in the membership of a board of health should be filled without delay, is a matter of discretion. The fact that a member of the board of health has a temporary residence during the winter months in a

city a short distance from the village, does not constitute such a removal from the village as to make the office vacant. *Matter of Board of Health of New Rochelle*, 64 Hun, 634; 46 St. Rep. 147; 19 N. Y. Supp. 131.

A veteran is not entitled to preference in appointment as a member of the board of health of a village. *People ex rel. Hall v. Trustees of Saratoga Springs*, 35 App. Div. 141; 54 N. Y. Supp. (88 St. Rep.) 1083; affd., 159 N. Y. 568.

The office of a member of a village board of health is a municipal office and his oath of office should be filed in the village clerk's office. *Matter of Board of Health of Lansingburgh*, 43 App. Div. 236.

A health officer is an officer of the state. *Bamber v. City of Rochester*, 63 How. Pr. 103.

As an officer of the state, a health officer is subject to the Civil Service Law and the rules and regulations of the civil service commission.

The rules of the civil service commission of the state of New York, as amended to May 1, 1902, provide as follows:

Rule V. The Exempt Class.—The following positions shall be included in the exempt class: * * * Local health officers whose compensation does not exceed \$300 per annum, provided, that persons appointed shall be practicing physicians of not less than five years' reputable standing and whose nomination or selection is approved by the state commissioner of health and so certified to the commission.

Under this rule of the civil service commission, it is the duty of the secretary of the local board of health to certify the appointment of the health officer and other required facts to the commission. See form No. 3, *post*.

For civil service rules, see Collier on Civil Service, p. 290.

§ 21. General powers and duties of local boards of health.

—Every such local board of health shall meet at stated intervals to be fixed by it, in the municipality. The presiding officer of every such board may call special meetings thereof where in his judgment the protection of the public health of the municipality requires it, and he shall call such meeting upon the petition of at least

twenty-five residents thereof, of full age, setting forth the necessity of such meeting. Every such local board shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation. Every such local board shall make and publish from time to time all such orders and regulations as they may deem necessary and proper for the preservation of life and health, and the execution and enforcement of the public health law in the municipality. It shall make without publication thereof, such orders and regulations for the suppression of nuisances, and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or post the same in some conspicuous place thereon. It may employ such persons as shall be necessary to enable it to carry into effect its orders and regulations, and fix their compensation. It may issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it shall have the same powers as a justice of the peace of the state in a civil action of which he has jurisdiction. It may designate by resolution one of its members to sign and issue such subpoenas. No subpoena shall be served outside the jurisdiction of the board issuing it, and no witness shall be interrogated

or compelled to testify upon matters not related to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as can not otherwise be subjected to its orders or regulations, and a warrant to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and for the benefit of the municipality; and to maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations.

Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing to the board of trustees of such village, stating and recommending what additions or alterations should in the judgment of such board of health be made with its reasons therefor, and thereupon such board of trustees shall immediately convene and consider such

recommendations, and if approved by such board of trustees, the same shall be certified to the state board of health for its approval, and if such recommendation shall be approved by the state board of health, it shall be the duty of the board of trustees of such village to forthwith make such additions to or alterations in the sewers of such village and execute such recommendation, and the expenses thereof shall be paid for by said village in the same manner as other village expenses are paid and said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board of trustees shall have the right to acquire such lands, rights of way, or other easements, by gift, or purchase, or in case the same can not be acquired by purchase the board of trustees may acquire the same by condemnation in the manner provided by law.

Revised from L. 1885, ch. 270, § 3, subds. 1, 6-10, and L. 1888, ch. 146. As amended by L. 1895, chs. 203 and 928.

See notes under §§ 25, 30, 31, *post*.

The legislature, in the exercise of its constitutional authority, may lawfully confer on boards of health, the power to enact sanitary ordinances having the force of law within the districts over which their jurisdiction extends. *Polinsky v. People*, 73 N. Y. 65. See also *Metropolitan Board of Health v. Heister*, 37 N. Y. 661; *Health Department v. Knoll*, 70 N. Y. 530; *People ex rel. Cox v. Justices of Sessions*, 7 Hun, 214.

An order made by a town board of health at a meeting at which the citizen member was not present, not having been notified to attend, is invalid. *Schoepflin et al. v. Calkins et al.*, 5 Misc. 159.

A health officer of a city who attended in person the treatment of a small-pox patient, though authorized by the board of health

to employ a special physician for the purpose, at a compensation not to exceed \$20 per day,—*Held*, not entitled to compensation in addition to his monthly salary for such services. *Reynolds v. City of Mt. Vernon*, 26 App. Div. 581; 50 N. Y. Supp. 473.

Under Public Health Law (§ 21), authorizing local boards of health to make such regulation as they deem necessary for the preservation of health, a regulation by such board requiring vendors of milk in a city to register each year before receiving a license to sell milk in the city for one year, is valid. *City of Gloversville v. Enos*, 35 Misc. 724; 74 N. Y. S. (106 St. Rep.) 398.

The fee of one dollar charged for registration is not considered a tax, and therefore such regulation is not void as to an honorably discharged soldier, authorized under the law to sell goods by procuring a license, without cost. He must register to avoid the penalty prescribed by such regulation. *Id.*

A board of health has no power to make a regulation which conflicts with the powers of quarantine officers. *People v. Roff*, 3 Park. 216.

The legislature may, in the interests of public health, vest the power in city councils to pass ordinances requiring either the filling up or draining of excavations upon land, within the corporate limits, which are filled with stagnant, foul, and unwholesome water, and an ordinance passed pursuant to such authority, has the same force as an act passed by the legislature itself. *Rochester v. Simpson*, 134 N. Y. 414; 47 St. Rep. 645; reversing 57 Hun, 36.

A board of health deriving its powers from section 21 of the Public Health Law, enacted an ordinance as follows: "No cows shall be kept within 200 feet of any dwelling in the village of Flushing, without a special permit obtained from the board of health." In an action brought to recover the penalty for a violation of this ordinance, it was *held*, that the ordinance was invalid; that while it would have been competent for it to have made a general regulation forbidding the keeping of cows within 200 feet of a dwelling-house, the board, by the use of the words "without a special permit," had reserved to itself the power of *licensing* cow stables in certain cases, a power not conferred by the statute. *Village of Flushing v. Carraher*, 87 Hun, 63.

The provision of the statute for a penalty "not exceeding one hundred dollars" for a single violation is permissible to local boards of health. The acts of the board, however, must be definite and certain. *Accordingly* where a board of health made a regulation in terms which were a mere repetition of the language of the statute,

and an action was brought to recover a penalty against a physician for failure to perform a prescribed duty, *held*, that as no definite penalty was fixed by the resolution of the board, none could be recovered. *McNall et al. v. Kales*, 61 Hun, 231.

By virtue of section 21 of the Public Health Law, a village board of health is authorized to make and publish orders and regulations for the suppression of nuisances and to carry them into effect, to employ such persons as may be necessary for the purpose and to fix their compensation, and it is not requisite that a nuisance should be declared, before assistants are employed, but their employment may be proper for the purpose of inspecting and reporting upon a given situation, concerning which no rule or regulation has yet been made. *Kent v. Village of North Tarrytown*, 50 App. Div. 502; 64 N. Y. Supp. 178.

A rule prohibiting the slaughtering of poultry at a public market in a city is reasonable. *Loewenstein v. Myers*, 66 Hun, 626; 20 N. Y. Supp. 761.

Ordinances adopted by the board of health of a town, under the Public Health Law, forbidding the having or keeping within the town of any refuse vegetable or animal matter in a decayed or decaying condition, and the boiling or cooking of garbage or refuse in any open vat or kettle so as to permit exhalations to escape into the surrounding air, *held* reasonable and valid. *Town of Newtown v. Lyons*, 11 App. Div. 105; 42 N. Y. Supp. 241.

The court will not, except upon good cause shown, interfere with the measures taken by public officials to protect the public health. *Egan v. Health Department of New York*, 9 App. Div. 431; 75 St. Rep. 770; 40 N. Y. Supp. 352.

Where the legislature has fixed a standard of limitation or rights, it is not competent for a board of health to impose additional restrictions. *Metropolitan Board of Health v. Schmades*, 10 Abb. Pr. (N. S.) 205; 3 Daly, 282.

A sanitary code, adopted by a board of health under a statute, has the force of a statute, even when it forbids and prescribes a penalty for offenses at common law. *People ex rel. Meyer v. Special Sessions*, 12 Week. Dig. 367.

Where the legislature has authorized a board of health to legislate upon certain subjects, the power conferred necessarily involves the exercise of discretion, and no court can review the acts of the board in respect to matters within its jurisdiction. *People v. Board of Health*, 33 Barb. 344.

PENAL CODE PROVISION.

§ 396. Obstructing health officer in performance of his duty.—

A person who willfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 22. Vital statistics.—Every such local board shall supervise and make complete the registration of all births, marriages and deaths occurring within the municipality, and the cause of death and the finding of coroner's juries, in accordance with the methods and forms prescribed by the state board of health, and, after registration, promptly forward the certificates of such births, marriages and deaths to the state bureau of vital statistics. Every physician or midwife attending at the birth of a child, and no physician or midwife being in attendance, the parent or custodian of a child born, and every groom, officiating clergyman or magistrate at every marriage shall cause a certificate of such birth or marriage to be returned within thirty days thereafter to the local board of health or person designated by it to receive the same, which shall be attested, if a birth, by the physician or midwife, if any in attendance, no physician or midwife being in attendance, by the parent or custodian of a child born, and, if a marriage, by the officiating clergyman or magistrate. The person making such certificate shall be entitled to the sum of twenty-five cents therefor, which shall be a charge upon, and paid by the municipality where such birth, marriage or death occurred. The cost of such registration, not exceeding twenty-five cents for the

complete registered record of a birth, marriage or death, shall be a charge upon the municipality. The charge for a copy thereof shall be fixed by the board, not exceeding the same sum for a complete copy of a single registered record and the additional sum of twenty-five cents if certified to. Such copy shall be furnished upon request of any person, and when certified to be correct by the president or secretary of the board or local registering officer designated by it shall be presumptive evidence in all courts and places of the facts therein stated.

Revised from L. 1885, ch. 270, § 3, subd. 5, and L. 1888, ch. 309. As amended by L. 1894, ch. 679, and L. 1897, ch. 138, § 1.

It is the duty of a board of health (of New York), to register all unrecorded births upon application being made therefor by the parents or guardians of such children. *Matter of Lauterjung*, 48 N. Y. Supr. (16 J. & S.) 308.

The statute imposes upon every local board of health the duty of supervising and making complete the registration of all births, marriages, and deaths occurring within its jurisdiction; and the cost of so doing, not to exceed the amount prescribed in the act, is a town charge, which must be audited and allowed by the board of town auditors. *People v. Board of Auditors*, 34 Hun, 336.

While it was the primary object of the legislature to furnish information on the subject of vital statistics for sanitary purposes, yet the language employed is broad enough to make certificates of the cause of death of persons, on file in the office of the clerk of the town in which such persons died, although not under oath, admissible in evidence upon the trial of an action, and such certificates are *prima facie* evidence of the facts therein set forth. *Woolsey v. Trustees of Ellenville*, 84 Hun, 236; 35 St. Rep. 412.

§ 23. Burial and burial permits.—Every such local board shall prescribe sanitary regulations for the burial and removal of corpses, and shall designate the persons who shall grant permits for such burial, and per-

mits for the transportation of any corpse which is to be carried for burial beyond the county where the death occurred. Where such persons are appointed by the board of health of any town, one of such persons shall be the town clerk of such town. Every undertaker, sexton or other person having charge of any corpse, shall procure a certificate of the death and the probable cause duly certified by the physician in attendance upon the deceased during his last illness, or by the coroner where an inquisition is required by law, and if no physician was in attendance, and no inquest has been held or required by law, an affidavit stating the circumstances, time and cause of death, and sworn to by some credible person known to the officer granting the permit, and there shall be no burial or removal of a corpse until such certificate or affidavit has been presented to the local board or to the person designated by it, and thereupon a permit for such burial or removal has been obtained. When application is made for a permit to transport a corpse over any railroad or upon any passenger steamboat within the state, the board of health, or the officers to whom such application is made, shall require such corpse to be inclosed in a hermetically sealed casket of metal or other indestructible material, if the cause of death shall have been from a contagious or infectious disease.

Revised from L. 1885, ch. 270, § 3, subd. 5; L. 1886, ch. 329, § 1, and L. 1888, ch. 309. As amended by L. 1899, ch. 211.

A permit for the burial of the dead, with a transit permit obtained from the board of health of the place where the death occurs, authorizes the body to be buried either in the county where the

death occurred or in any other county, without any permit in the latter case from the local board of health. *Eickelberg v. Board of Health of Newton*, 47 Hun, 371.

§ 24. **Contagious and infectious diseases.**— Every such local board of health shall guard against the introduction of contagious and infectious diseases by the exercise of proper and vigilant medical inspection and control of all persons and things arriving in the municipality from infected places, or which from any cause are liable to communicate contagion. It shall require the isolation of all persons and things infected with or exposed to such diseases, and provide suitable places for the treatment and care of sick persons who can not otherwise be provided for. It shall prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and, if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed. It shall report to the state board of health, promptly, the facts relating to contagious and infectious diseases, and every case of small-pox or varioloid within the municipality. Health officers of villages and towns shall report in writing once a month to the state board of health all cases of such infectious and contagious diseases as may be required by the state board of health, and for such reporting the health officer shall be paid by the municipality employing him, upon the certification of the state board of health, a sum not to exceed twenty cents for each case so reported; and the health

officer shall report annually on or before the first day of January in each year the number of cases of consumption which have existed in his jurisdiction during that year, and for each case thus reported he shall receive a sum not to exceed ten cents, to be paid in the same manner as the other like charges are paid. It shall provide, at stated intervals, a suitable supply of vaccine virus, of a quality and from a source approved by the state board of health, and during an actual epidemic of small-pox obtain fresh supplies of such virus at intervals not exceeding one week, and at all times provide thorough and safe vaccination for all persons in need of the same. If a pestilential, infectious or contagious disease exists in any county almshouse or its vicinity, and the physician thereof shall certify that such disease is likely to endanger the health of its inmates, the county superintendent of the poor may cause such inmates or any of them to be removed to such other suitable place in the county as the local board of health of the municipality where the almshouse is situated may designate there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance until they shall be safely returned to such almshouse or otherwise discharged. The boards of health of the cities of New York, Brooklyn, Buffalo, Albany and Yonkers, shall report promptly to the state board all cases of small-pox, typhus and yellow fever and cholera and the facts relating thereto.

Revised from L. 1885, ch. 270, § 3, subd. 6, and § 6.

Under section 24, a board of health has power, during an epidemic of small-pox, to quarantine persons who have been exposed to

the disease and are liable to be seized with and communicate it to others. *Matter of Smith*, 84 Hun, 465; 65 St. Rep. 474; 32 N. Y. Supp. 317.

The court of appeals in case last cited, while holding the same doctrine as above stated, in a proper case, reversed the decision of the court below, upon the ground that the facts shown did not warrant the isolation and detention of the relator. *Matter of Smith*, 146 N. Y. 68, 78.

The determination of a sanitary inspector in ordering a person suffering from small-pox to be taken to the small-pox hospital, is final as to the legality or propriety of such removal. *Brown v. Purdy*, 8 St. Rep. 143.

The provisions of the general statute relating to local boards of health do not authorize the quarantine of a person who might have been exposed to small-pox, although he refused to be vaccinated, but conditions for the communication of the disease must have existed in the particular case. *Smith v. Emery*, 11 App. Div. 10; 42 N. Y. Supp. 258, citing *Matter of Smith*, 146 N. Y. 68.

Where a local board of health incurs expense in the performance of the duty imposed by the Public Health Law (§ 24) in guarding against the introduction of contagious or infectious diseases, or the isolation of infected persons or things, or in providing suitable places for the care of the sick who cannot otherwise be provided for, it becomes the duty of the municipal authorities to comply with the order of the board of health in that regard, whether there is any provision to that effect in the charter or not. *Matter of Plattsburgh*, 157 N. Y. 78, reversing *S. C.*, 27 App. Div. 353.

A board of health has no power and cannot take and occupy premises as a pesthouse without the owner's consent. *Boom v. City of Utica*, 2 Barb. 104.

The health officer of the port of New York has power to land for temporary purposes persons suspected to have cholera, upon the territory of another county, regardless of the prohibition by the local board of health. *Young v. Flower*, 3 Misc. 34; 53 St. Rep. 43; 22 N. Y. Supp. 332.

PENAL CODE PROVISIONS.

§ 434. **Exposing person affected with a contagious disease, in a public place.**—A person who willfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

§ 25. **Nuisances.**—Every such local board shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the municipality, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same. The owners, agents and occupants of any such premises shall permit such sanitary examinations to be made, and the board shall furnish such owners, agents and occupants with a written statement of the results and conclusions of any such examination. Every such local board shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the municipality. Whenever the state board of health or its president and secretary shall by notice to the presiding officer of any local board of health, request him to convene such local board to take certain definite proceedings concerning which the state board of health or its president and secretary shall be satisfied that the action recommended by them is necessary for the public good, and is within the jurisdiction of such board of health, such presiding officer shall convene such local board, which shall take the action recommended.

Revised from L. 1885, ch. 270, § 3, subds. 1, 4.

Although sections 21 and 25 of the Public Health Law confer upon the board of health power without publication to make such orders and regulations for the suppression of nuisances and concerning all other matters in its judgment detrimental to the public health in

special or individual cases, not of general application, it is, at least, an open question whether the construction of a drain, which is in reality a sewer, should not have been undertaken by the village authorities (board of trustees) instead of by the board of health. *People ex rel. Govers v. New Rochelle*, 17 App. Div. 603, 604, 605; 45 N. Y. Supp. 836.

A village board of health has no power to delegate authority to an officer of the society for the prevention of cruelty to animals to exercise its own right to kill horses afflicted with glanders. *Westchester Electric R. Co. v. Angevine*, 52 App. Div. 239; 65 N. Y. Supp. (99 St. Rep.) 376.

The discharge of hotel sewage into a stream of water, so as to pollute it and render it unfit for domestic uses by the riparian owners below, is not justified by an order of the board of health, which has no power to make such an order. *Mann v. Willey*, 57 App. Div. 169; 64 N. Y. Supp. (98 St. Rep.) 589.

A board of health has no power to declare a business a nuisance, without notice to the offending party, and giving him an opportunity to be heard. *People ex rel. Savage v. The Board of Health*, 33 Barb. 344; 12 Abb. Pr. 88; 20 How. Pr. 458.

Certiorari is the proper remedy to review a determination of a board of health as to the existence and abatement of a nuisance; a board of health before a final determination as to a nuisance, should give a reasonable notice to the person against whose rights the decision will operate, to enable him to defend himself; the omission of such notice is fatally defective. *People ex rel. N. Y. C. & H. R. R. Co. v. Board of Health of Seneca Falls*, 58 Hun, 595; 35 St. Rep. 411.

A board of health may invoke the aid of the courts to restrain a violation of its order and to abate a nuisance, although the cause thereof arises in an adjoining municipality. *Gould v. City of Rochester*, 105 N. Y. 46, reversing 39 Hun, 79.

To justify a health officer in condemning things deleterious to health, the fact of their being such or likely to become so must be shown, so as to make a case calling for the exercise of his discretion. *Underwood v. Green*, 42 N. Y. 140, reversing 26 Sup. Ct. Rep. (3 Rob.) 86.

§ 26. **Removal of nuisances.**— If the owner or occupant of any premises fails to comply with any order or regulation of any such local board for the suppression

and removal of any nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this article, such boards or their servants or employes may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter. The expense of such suppression or removal shall be paid by the owner or occupant of such premises, or by the person who caused or maintained such nuisance or other matters, and the board may maintain an action in the name of the municipality to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality.

Revised from L. 1885, ch. 270, § 4.

It is within the discretionary power of a board of health to suppress a business of rendering dead animals, after proper notice. *Cushing v. Board of Health*, 13 St. Rep. 783.

An owner failed, upon notice, to abate a nuisance resulting from the clogging of a sewer connecting a privy vault with the main sewer, and, it appearing that all that was necessary to do to render the vault inoffensive was to have it cleaned, the board of health has no right to put in a new sewer and new water-flushed closets at the expense of the owner. *Eckhardt v. Buffalo*, 19 App. Div. 1; *affd.*, 156 N. Y. 658.

A board of health has power to abate a public nuisance in a summary manner; but whether the thing directed to be abated is, or is not, a public nuisance, is a jurisdictional fact; the board cannot declare that to be a nuisance which is not. *Coe v. Schultz*, 47 Barb. 64; 2 Abb. Pr. (N. S.) 193. See also *Schuster v. Met. Board of Health*, 49 Barb. 450; *Hoffman v. Schultz*, 31 How. Pr. 385.

Where a business is so carried on as to be a public nuisance *per se*, the board of health has power to abate it, where notice to show cause has been duly served and disregarded by the parties.

Weil v. Schultz, 33 How. Pr. 7; *Westheimer v. Schultz*, 33 How. Pr. 11.

Where a board of health, having jurisdiction of the subject-matter, has heard the parties and determined that certain premises are a nuisance, and took steps to abate it "as a sanitary necessity," an injunction restraining such action to abate the nuisance was properly dissolved. *Caol v. Buffalo*, 16 Week. Dig. 8.

A board of health of a city has power and authority to remove, or cause to be removed, a building or part of a building which, by reason of a fire, has become a nuisance and dangerous to the lives of persons traveling along the street, and is under no obligation to barricade the sidewalks so as to prevent its use. In such a case however the board of health, if its action is called in question, must be prepared to show that the condition of the building was dangerous to the public, and as such was a nuisance. *Smith v. Irish*, 37 App. Div. 220; 55 N. Y. Supp. (89 St. Rep.) 837.

An ordinance, adopted by the board of health of a municipal corporation pursuant to legislative authority, prohibiting the maintenance of any privy vault within twenty-five feet of any residence and declaring the same to be a nuisance, is a reasonable regulation; and where the owner of the premises upon which such a vault exists, after notice to appear before the board, which he does not comply with, fails to abate the nuisance, the board may declare that particular vault a nuisance, and abate the same as detrimental to life and health, by filling it with earth. *Cartwright v. City of Cohoes*, 39 App. Div. 69; 56 N. Y. Supp. (90 St. Rep.) 731; *affd.*, 165 N. Y. 631.

The owner of premises, although not in possession, is liable for the maintenance of a nuisance thereon, where he receives rent with knowledge thereof. *Board of Health v. Valentine*, 32 St. Rep. 919.

Where it is sought to make a party liable by reason of an order of a board of health, there must be legal evidence that such order was made by the board. Mere service of notice is not legal proof of the action of the board. *Lees v. Ritterman*, 9 Misc. 476; 61 St. Rep. 114.

In an action for maintaining a nuisance, the decision and determination of a board of health, upon an *ex parte* examination, not in the presence of the defendant, is not admissible against them. *Hochstrasser v. Martin*, 62 Hun, 165; 41 St. Rep. 761.

The fact that others contributed to the nuisance is no defense for maintaining it. *City of Yonkers v. Copcutt*, 71 Hun, 149; 54 St. Rep. 311; 24 N. Y. Supp. 625.

A board of health may abate a nuisance of a public character, and exercise every power necessary to this end, and as an incident to such power may make a permanent improvement to prevent a recurrence of the nuisance, provided the work bears a necessary and legitimate relation to the abatement of the nuisance; but it cannot go into the domain of public improvement and erect buildings and construct drains not necessary to the abatement of a nuisance and impose the burden upon the individual or his property, especially where the charter of the city provides for action in the premises by the common council. *Haag v. City of Mt. Vernon*, 41 App. Div. 366; 58 N. Y. Supp. (92 St. Rep.) 581.

Whoever, in abating an alleged nuisance, injures private property or interferes with private rights, whether he be a public officer or private person, save when he acts under the judgment or order of a court having jurisdiction, acts at his peril, and this principle is applicable to boards of health. *Eckhardt v. City of Buffalo*, 19 App. Div. 1; 46 N. Y. Supp. (80 St. Rep.) 204.

Under the general language of the statute, requiring orders for the suppression of nuisances to be served "upon the owner or occupant of any premises whereon such nuisances may exist, and, in case of disobedience or failure to comply with such order, authorizing the removal of the nuisance, and making the expense thereof a charge on the occupant, an order directed to the owner, but served upon his agent who was the occupant, does not require the agent to remove the nuisance, and will not sustain an action against him." *Lydecker et al. v. Eells*, 20 St. Rep. 886; 3 N. Y. Supp. 323.

The determination of a board of health as to a nuisance is not final and conclusive, and the members and all persons acting under their authority in abating an alleged nuisance act at their peril. A board of health has the right to act upon its own inspection and knowledge of an alleged nuisance and is not obliged to hear anybody. If it is challenged in a court it must make it appear that the thing abated was in fact a nuisance. *People ex rel. Copcutt v. City of Yonkers*, 55 St. Rep. 416; affd., 140 N. Y. 1.

An order of a town "board of health declaring a rendering establishment a nuisance and directing the abatement thereof is invalid, and cannot be enforced, it appearing that, before the order was made, no notice was given to the proprietors that they might be heard in their own behalf." *Schoepflin et al. v. Calkins et al.*, 5 Misc. 159; *N. Y. C. & H. R. R. Co. v. Board of Health*, 58 Hun, 595; 35 St. Rep. 413; *People v. Wood*, 62 Hun, 131.

Where a fat-boiling establishment emits odors injurious to health, rendering life uncomfortable, the board of health is in duty bound

to exercise its authority promptly to suppress the business of the establishment. *Weil v. Schultz*, 33 How. Pr. 7.

Under a former statute (L. 1885, ch. 270), creating boards of health in towns with power to hear complaints concerning nuisances and to make and enforce orders, a town board of health may lawfully make an order for the suppression and removal of a nuisance consisting of the discharge of sewage on lands of the town by a city. *Bell v. City of Rochester*, 58 Hun, 602; 11 N. Y. Supp. 305.

The board of health has the power to direct improvements or alterations in existing houses at the expense of the owner where it is necessary to protect and conserve public health, safety, and welfare; but such requirements must not be unreasonable. *Health Dept. of N. Y. v. Rector, etc., of Trinity Church*, 145 N. Y. 32.

It is the province of the legislature to determine what is best for the public good, and to provide for it by proper enactments. Usually, either by general law or by municipal charters very extensive powers are conferred upon local boards of health, under which, when acting in good faith, they may justify themselves in taking possession of, purifying, or even destroying, the buildings or other property of the citizen when the public health or comfort demands such strong measures. *Regan v. Fosdick*, 19 Misc. 489, 492. See also *Van Wormer v. City of Albany*, 15 Wend. 262; *Coe v. Schultz*, 47 Barb. 64; *Met. Board of Health v. Heister*, 37 N. Y. 661; *Matter of Ryers*, 72 N. Y. 7.

In the case last cited, the court said: "There is scarcely an object that has been the subject of more enactments than this, or as to which more power is given to officials over the citizen and his property, and by more summary proceedings."

A city has no power nor right to take and appropriate the natural and permanent banks of a stream without making the owner compensation therefor. The common council passed resolutions declaring certain obstructions and deposits in an unnavigable stream, not a public highway, within the city limits, which obstructions caused stagnant water to accumulate detrimental to health, and required the same to be removed at the expense of the owners or occupants, and the resolution contained a description of the width and depth of the creek, which was declared to be its natural and normal channel and grade, and that all matter lying in such creek above such grade were obstructions and deposits, and the owner cleaned out the portion of the creek on his land to its normal and natural bed and bank. Afterward the city superintendent entered and cut down the bank and trees growing thereon, and the city brought action to recover the expense thereof. *Held*, that the action

was not maintainable. *City of Schenectady v. Furman*, 145 N. Y. 482; 65 St. Rep. 361; affirming 78 Hun, 87.

The provisions of section 21 of the Public Health Law, and of sections 26 and 30 of that law, require that an action brought to abate a nuisance existing within the limits of a village, and to enforce orders and regulations of the village board of health in regard to the nuisance, shall be brought in the name of the village and not in that of the board of health. *Board of Health of Green Island v. Magill*, 17 App. Div. 249; 45 N. Y. Supp. 710.

In order to sustain an action for the expense of removing a nuisance, an order must be made by the board of health and "served" upon the occupant or occupants and the owner or owners of any premises whereon any such nuisance" shall exist. See *Lydecker v. Eells*, 20 St. Rep. 886; 3 N. Y. Supp. 323.

Expenses incurred in abating a nuisance pursuant to the direction of the board of health of a village are to be charged upon the occupant of the property, and cannot be recovered in an action against the village. *Prendergast v. Village of Schaghticoke*, 42 Hun, 317; 4 St. Rep. 819; 25 Week. Dig. 119.

A board of health has no power to order a mill dam, whose waters have been used for driving machinery for more than sixty years, to be removed as a public nuisance; the parties are entitled to a trial by jury. *Rogers v. Barker*, 31 Barb. 447.

A building constituting a nuisance may be destroyed if that is the only method of abating a nuisance. *Health Dept. v. Dassori*, 21 App. Div. 348; 47 N. Y. Supp. (81 St. Rep.) 641.

See notes under §§ 21, 25, 30.

§ 27. Expense of abatement of nuisances a lien upon the premises.— If execution upon a judgment for the recovery of the expense of the suppression or removal of a nuisance or other matter, pursuant to an order or regulation of any such local board, is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and incumbrances whatever. The board

may cause such premises to be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale. Notice of such sale shall be published for twelve weeks successively, at least once in each week, in a newspaper of the city, village or town, or if no newspaper is published therein, in the newspaper published nearest to such premises. If the owner or occupant of the premises, or his agent, is known, a copy of such notice shall be served upon him, either personally, at least fourteen days previous to the sale, or by mail at least twenty-eight days prior thereto. The premises shall be sold to the person offering to take them for the shortest time, paying the amount unpaid on such judgment and interest and the expenses of such notice and sale. A certificate of the sale, signed and acknowledged by the president and secretary of the board, shall be made and delivered to the purchaser, and may be recorded as a conveyance of real property, and the purchaser shall thereupon be entitled to the immediate possession of such premises, and, if occupied, may maintain an action or proceeding to recover the possession thereof against the occupant, as against a tenant of real property holding over after the expiration of his term; and the cost of any such action or proceeding, if not paid by the occupant, shall also be a lien upon such premises, having the same preference as the lien of such judgment, and the right of the purchaser to such premises shall be extended for a longer term, which shall bear the same proportion to the original term as the amount

of such costs bears to the amount paid by the purchaser on such sale. The term of the purchaser at any such sale shall commence when he shall have acquired possession of the premises sold. At any time within six months after recording such certificate, the owner of the premises or any lessee, mortgagee or incumbrancer thereof, or of any part of the same, may redeem the premises or any such part from such sale by paying to the purchaser the amount paid by him on the sale, and all costs and expenses incurred by him in any action or proceeding to recover possession with interest at the rate of ten per cent per annum thereon. If redemption is made by the owner, the right of the purchaser shall be extinguished; if by a lessee the amount paid shall be applied as a payment upon any rent due or which may accrue upon his lease; if by a mortgagee or an incumbrancer, the amount paid shall be added to his mortgage, incumbrance or other lien, or if he have more than one to the oldest, and shall thereafter be a part of such mortgage, lien or incumbrance and enforceable as such.

Revised from L. 1885, ch. 270, last part of § 4.

§ 28. Manufactures in tenement houses and dwellings.—No room or apartment in a tenement or dwelling house, used for eating or sleeping purposes, shall be used for the manufacture, wholly or partly, of coats, vests, trousers, knee-pants, overalls, cloaks, shirts, purses, feathers, artificial flowers or cigars, except by the members of the family living therein, which shall include a husband and wife and their children, or the children of either. A

family occupying or controlling such a workshop shall, within fourteen days from the time of beginning work therein, notify the board of health of the city, village or town, where such workshop is located, or a special inspector appointed by such board, of the location of such workshops, the nature of the work carried on, and the number of persons employed therein; and thereupon such board shall, if it deems advisable, cause a permit to be issued to such family to carry on the manufacture specified in the notice. Such board may appoint as many persons as it deems advisable to act as special inspectors. Such special inspectors shall receive no compensation, but may be paid by the board their reasonable and necessary expenses. If a board of health or such inspector shall find evidence of infectious or contagious diseases present in any workshop, or in goods manufactured or in process of manufacture therein the board shall issue such orders as the public health may require, and shall condemn and destroy such infectious and contagious articles, and may, if necessary to protect the public health, revoke any permit granted by it for manufacturing goods in such workshop. If a board of health or any such inspector shall discover that any such goods are being brought into the state, having been manufactured, in whole or in part, under unhealthy conditions, such board or inspector shall examine such goods, and if they are found to contain vermin, or to have been made in improper places or under unhealthy conditions, the board may make such orders as the pub-

lic health may require, and may condemn and destroy such goods.

Revised from L. 1892, ch. 655, §§ 1-8.

§ 29. **Jurisdiction of town and village boards.**—A town board of health shall not have jurisdiction over any city or incorporated village or part of such city or village in such town if such city or village has an organized board of health. The boards of health of any town and the incorporated villages therein, or any two or more towns and the incorporated villages therein, may unite, with the written approval of the state board of health, in a combined sanitary and registration district, and appoint for such district one health officer and registering officer, whose authority in all matters of general application shall be derived from the boards of health appointing him; and in special cases not of general application arising within the jurisdiction of but one board shall be derived from such board alone. When one or more towns and the incorporated villages therein unite in one registration district, the registrar of vital statistics of such combined district will be required to make separate returns to the state board of health of village and town certificates of births, marriages and deaths.

Revised from L. 1885, ch. 270, § 7. As amended by L. 1897, ch. 169, § 1.

§ 30. **Expenses, how paid.**—All expenses incurred by any local board of health in the performance of the duties imposed upon it or its members by law shall be a

charge upon the municipality, and shall be audited, levied, collected and paid in the same manner as the other charges of, or upon, the municipality are audited, levied, collected and paid. The taxable property of any village maintaining its own board of health shall not be subject to taxation for maintaining any town board of health, or for any expenditure authorized by the town board of health, but the costs and expenditures of the town board shall be assessed and collected exclusively on the property of the town outside of any such village.

Revised from L. 1885, ch. 270, §§ 5, 7.

A board of health has power to act upon a thing dangerous to public health, but it has no power to assume that all the sinks and privies in a city are or will become nuisances, or dangerous to public health and bind the municipality by its contract for the removal of their contents. *Goodrich v. New York*, 40 N. Y. 273.

The Public Health Law (§ 30) provides that all expenses incurred by any local board of health in the performance of the duties imposed upon it or its members by law shall be a charge upon the municipality and must be audited, levied, collected, and paid in the same manner as other charges upon the municipality. The Health Law is to be taken in connection with the Village Law. *Kent v. Village of North Tarrytown*, 50 App. Div. 502, 510; 64 N. Y. Supp. 178.

This provision of the general law must be regarded as in the nature of an amendment to, or at least a part of all municipal charters. The charter of this village, it is true, contains no provision authorizing the trustees to raise money or to contract debts for the purpose of suppressing disease or preserving the public health, but the General Laws of the State make it their duty to comply with the orders of the local board of health in this respect, and when that board incurs expense in the performance of its duty in guarding against the introduction into the village of contagious or infectious diseases or in the isolation of persons or things infected with or exposed to such diseases, or in providing suitable places for the treatment and care of the sick who cannot otherwise be provided for, it becomes the duty of the municipal authorities to comply with

the order *whether there is any provision to that effect in the charter or not.* *Matter of Taxpayers of Plattsburgh*, 157 N. Y. 86.

A drain built under contract with a town board of health and designed to abate a nuisance, is a town charge, and a claim therefor must be presented to the town auditors for audit. There is no liability on the part of the members of the town board of health. *Malloy v. Board of Health*, 60 Hun, 422.

Where the bill of a health officer of a village was made out in a form which indicated that it was an independent claim for his services as a physician and not for his compensation as health officer, it was *held*, that it was to be viewed as an ordinary claim against the village and audited at what the trustees believed to be a reasonable amount, although the bill for a larger amount had been approved by the board of health. *People ex rel. McGovern v. Penn Yan*, 2 App. Div. 29; *affd.*, 153 N. Y. 643; *People v. Supervisors of Dutchess Co.*, 9 Wend. 508.

§ 31. Mandamus.—The performance of any duty or the doing of any act enjoined, prescribed or required by this article, may be enforced by mandamus at the instance of the state board of health or its president or secretary, or of the local board of health, or of its president or secretary, or of any citizen of full age resident of the municipality where the duty should be performed or the act done.

Revised from L. 1885, ch. 270, § 8.

See *People ex rel. Boltzer v. Daley*, 37 Hun, 461; also first note under § 20, *ante*.

Section 21 confers upon the board of health power to certify to the village trustees the insufficiency of sewers, and section 31 confers upon the board of health the power to compel the village authorities to comply with its orders in this respect. *People ex rel. Govers v. New Rochelle*, 17 App. Div. 603, 605; 45 N. Y. Supp. 836.

§ 32. Exceptions and limitations as to cities of New York, Brooklyn, Buffalo, Albany and Yonkers.—This article shall not be construed to affect, alter or repeal laws now in

force relating to the boards of health of the cities of New York, Brooklyn, Buffalo, Albany and Yonkers, nor the sanitary codes duly adopted and now in force in such cities.

Revised from L. 1885, ch. 270, § 3.

ARTICLE III.

ADULTERATIONS.

SECTION 40. Definitions.

41. Adulterations.
42. Duties of state board of health in respect to adulterations.
43. Analysis of spirituous, fermented or malt liquors.
44. Samples to be furnished.
45. Seizure of milk.
46. Adulteration of wines.
47. Pure wine defined.
48. Half wine and made wine defined; packages how stamped or labeled.
49. Penalties.
50. Report to district attorney.

§ 40. **Definitions.**— The term, food, when used herein, shall include every article of food and every beverage used by man and all confectionery; the term, drug, when so used shall include all medicines for external and internal use.

Revised from L. 1881, ch. 407, § 2, and L. 1886, ch. 477, § 1.

§ 41. **Adulterations.**— No person shall, within the state, manufacture, produce, compound, brew, distill, have, sell or offer for sale any adulterated food or drug. An article shall be deemed to be adulterated within the meaning of this act: