

### CHAPTER III.

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## Boards of Health and Health Officers; Their Powers and Duties.

**Introductory.**—The purpose of this work is to aid local boards of health and health officers in the performance of their duties and the exercise of their powers, by pointing out briefly and more clearly than in statutory language, the powers and duties conferred upon them. Such being the case it is not deemed advisable to enter into any detail as to the work of the State Department of Health. That department has supervisory power over local boards of health and may reverse or modify an order, regulation, by-law or ordinance of a local board in certain instances. And it may also take control of the duties of local boards in cases where the local board fails to perform its duties properly, even to the appointment of a health officer; and the expenses lawfully incurred by such health officer and of the State Commissioner of Health must be paid by the municipality. The state department furnishes blank forms for the use of local boards, in the registration of vital statistics especially, and generally will aid a local board by advice and suggestion whenever called upon.

LOCAL BOARDS OF HEALTH; ORGANIZATION, POWERS  
AND DUTIES.

§ 1. **Local boards; general.**—Local boards of health are especially charged with the care and preservation of the public health. The powers conferred upon them by statute are broad and ample for the suppression, by summary action, of all acts, conditions and things found detrimental to the lives and health of the people. Their duties are in like manner made commensurate with their powers. Such duties as are prescribed by statute may be enforced against them by mandamus, but a wide discretion is permitted in the exercise of their powers. The courts are very liberal in the construction of statutory provisions, especially when powers are conferred for so beneficial purposes.

§ 2. **Local boards; in cities.**—In all cities of this state, except New York, Brooklyn, Buffalo, Albany and Yonkers there must be a board of health organized under the provisions of the Public Health Law. Such board of health 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. It is required that the terms of two of the appointed members shall expire each year. The board must also appoint a competent physician to be health officer, also other officers, as secretary, registering officer, inspectors, etc.

§ 3. **Local boards; in villages.**— In villages the board of health shall consist of not less than three nor more than seven members to be appointed by the board of trustees at their first meeting, after the next election of the village, that is, after the passage of the act (in 1893). It was further provided that the members of the village board of health should at their first meeting, divide themselves by lot into three classes, whose terms of office should then expire in one, two and three years, respectively. From and after such appointment and division into classes, the appointment of successors of said members is to be made after each annual election of the village. So that all appointees as members of a village board of health hold office for three years,—a portion being appointed annually. A village board of health should immediately after the annual appointments are made, organize by the election of a president and secretary and the appointment of a health officer and registrar of vital statistics.

§ 4. **Local boards; in towns.**— In towns, the board of health shall consist of the town board (supervisor, town clerk and justices of the peace) 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. The supervisor acts as presiding officer. Town boards of health are required to appoint *annually*, a health officer. They should also designate some person as registering officer.

§ 5. **Local boards; health officer.**— Every local board of health is required by section 20 of the Public Health Law to appoint a competent physician to be health officer of the municipality for which such appointment is made. It is not required that the health officer shall be a resident of the municipality for which he is appointed and such health officer may, therefore, be chosen who is a resident of another town or another county.

The appointment of a nonresident physician as health officer of a town is frequently a necessity, as very many towns have no resident physicians.

See Form No. 1, *post*.

A health officer is subject to the State Civil Service Law and the rules and regulations of the State Civil Service Commission. He must be a physician of at least five years' reputable practice, free from any physical defect or disease that would be likely to interfere with the discharge of his duties as health officer, and of good character. If his compensation does not exceed \$300 per year, he is exempt from the civil service examinations. The appointment must be certified to the Civil Service Commission and approved by the State Commissioner of Health.

For certificate of appointment and approval, see Form No. 3, *post*.

If the salary or compensation to be received by a health officer is over \$300, he must pass a competitive civil service examination, blanks for which with full instructions may be procured by addressing the secretary of the Civil Service Commission, Capitol, Al-

bany, N. Y. If a physician has once passed a State civil service examination for the position of health officer and holds a certificate to that effect, it will not be necessary for him to pass another; but in any event his appointment must be certified to the State Civil Service Commission.

§ 6. **Local boards; registering officer.**— By section 22 of the Public Health Law, every local board of health is required to supervise and make complete the registration of all births, marriages, and deaths occurring in the municipality and is authorized to designate some person to receive and register notices thereof. The cost of such registration is twenty-five cents for each birth, marriage or death and is a charge upon the municipality. The registrar is entitled to a sum not exceeding twenty-five cents, to be fixed by the board for a copy of the record and an additional twenty-five cents if such copy is certified. If certified by the president or secretary of the board or the registering officer such copy is made presumptive evidence in all courts and places.

In towns it is usual to designate the town clerk as registering officer and in villages, the village clerk, yet any citizen may be appointed. The registering officer may be a female.

The purpose of requiring registration is two-fold. (1) In showing causes of death, it forms a basis and guide for sanitary work and operates as a direct safeguard against the spread of contagious diseases by keep-

ing watchful observance of their occurrence and restricting the transportation of contagion from sick or deceased persons. (2) The registration of births, deaths and marriages in the old countries, especially in England, have been found most valuable in settling questions relating to estates, and for such purposes the system is becoming more and more valuable in this country.

**§ 7. Local boards; vacancies; notice of membership.—**

In case the proper local authorities shall not fill any vacancies occurring in any local board of health within thirty days after the happening of a vacancy, the county judge of the county shall appoint some competent person to fill the vacancy for the unexpired time. (§ 20.) It is doubtful if this provision is applicable to town boards of health, as the exercise of the authority conferred by section 20 of the Health Law would conflict with the provisions of the Town Law providing for filling vacancies in the offices of supervisor, town clerk and justices of the peace.

Notice of the membership and organization of every local board of health must immediately be given to the State Department of Health.

See Form No. 4, *post*.

**§ 8. Local boards; powers and duties; meetings.—** It is required by section 21 of the Health Law that every local board of health shall meet at stated intervals. These stated meetings are usually held once a month.

The secretary should keep a record of all proceedings of every meeting held by the board. By-laws or rules of procedure will be found advantageous in facilitating the work of the board. At stated meetings of the board any kind of business which it is authorized to transact may be brought up and disposed of. The more important are the making and adoption of general orders and regulations, receiving reports of committees and of the health officer, all of which should be in writing, hearing and examination of complaints and making of special orders and regulations for the suppression of nuisances, etc.

Special meetings may be called by the presiding officer at any time, and he *must* call a special meeting upon the petition of at least twenty-five residents of the municipality, of full age, stating the necessity for such meeting. In case of an epidemic meetings might be required daily and these might be special or adjourned meetings; that is, a regular meeting might be adjourned from day to day, or a special meeting might be called for each day, or, when once called, might be adjourned from day to day. A call for a special meeting should state the specific purpose for which the meeting is called; and, as a general rule, no matters can be legally considered by a special meeting except such as are specified in the call.

Meetings of the local board may also be called whenever requested by the State Department of Health for the purpose of taking action upon the recommendation of the State Department. (§ 25.) Every member of

the board must be notified of a special meeting, otherwise the proceedings are invalid.

See *Schoepflin v. Calkins*, 5 Misc. 159; note under § 21, chapter I, *ante*.

§ 9. **Local boards; duties of health officer.**—The duties of a health officer are prescribed by the local board of health. He is the executive officer of the board. He is to be directed by the board in the performance of his duties.

As stated by Parker and Worthington, in their excellent work on "Public Health and Safety:" "The general duties of a medical officer of health are such as naturally pertain to the office of chief executive officer and adviser of the board of health. He should inform himself, as far as practicable, respecting all influences affecting or threatening to affect injuriously the public health within his district; he should inquire into and ascertain, by such means as are at his disposal, the causes, origin, and distribution of diseases within the district, and determine to what extent the same have depended on conditions capable of removal or mitigation; he must be prepared to advise the board of health on all matters affecting the health of the district, as to the means of preventing or removing nuisances and causes of disease, and as to the propriety of adopting general sanitary regulations or special orders in particular cases; he must take all practicable means to secure early information of the occurrence of cases of communicable disease; and on receiving notice, or having good reason to believe that there is, within his district, a case of disease dangerous to the public health, he must investigate the subject without delay; advise the persons competent to act as to the measures required to prevent the extension of the disease; order the prompt isolation of those sick with the disease, and the vaccination or isolation of those who have been exposed to the disease; if necessary, furnish the means for proper medical care and nursing; give public notice of all infected places by placard on the premises, or otherwise, if necessary; notify teachers or superintendents of schools concerning families in which there are contagious diseases; supervise funerals of persons who die from disease dangerous to the public health; disinfect rooms, clothing, and all articles likely to be infected, or direct their destruction, if neces-



sary; and finally, he must keep the local board of health and state department of health informed respecting all cases of contagious or infectious diseases which come to his knowledge and are likely to endanger the public health."

By section 24 of the Public Health Law a particular duty is imposed upon a local health officer in requiring him to report in writing once a month to the State Department of Health, all cases of contagious and infectious diseases which may exist within his jurisdiction. Cards for making these monthly reports are furnished by the department. He is also required to report PROMPTLY by letter or otherwise if necessary the appearance of any dangerous, contagious or infectious disease in his municipality. To aid the health officer in making prompt and full reports it is the duty of boards of health to *make* and *enforce* such rules as are necessary to compel all local physicians to report to the health officer all their cases of contagious and infectious diseases. A definite penalty for a violation of such rules should be fixed, and promptly enforced in case of violation.

**§ 9a. Local boards; duty of health officer respecting tuberculosis.**— The provisions of "The Public Health Law" (§§ 4, 5) require the Commissioner of Health to take cognizance of the interests of the health and life of the people of the State and of all matters pertaining thereto. By section 24, health officers are required to report to the State Department of Health, on or before January first of each year, the number of cases of consumption which have existed within his jurisdiction during the

preceding year. Under these provisions of the law, active measures for the prevention of tuberculosis in this State have been taken by the State Department of Health, and among other things, health officers are required to register the name, age, sex and address of every person suffering from that disease within their respective jurisdictions. Cases of consumption in tenement-houses, boarding-houses, and hotels are under the especial surveillance of the health officer in conjunction with the attending physician, but only so far as giving information and instruction, either through the attending physician or duly qualified inspectors, concerning measures which should be taken to guard against the spread of the disease.

In case of premises which have been occupied by consumptives being vacated by death or removal, it is the duty of the health officer to send an inspector who should give directions for the removal of all infected articles for disinfection and also make such written recommendations to the health officer concerning the cleansing and renovation of the apartment as may be required, such as scrubbing, whitewashing, painting and papering. An order embodying the inspector's recommendations should then be made and served upon the owner of the premises and compliance with the order may be enforced for sanitary reasons, in like manner as an order for the removal of a nuisance.

*No other person than those living there at the time should be allowed to occupy such apartments until the order of the health officer has been complied with.*

§ 10. **Local boards; agents and employes.**—A local board of health “may employ such persons as shall be necessary to enable it to carry into effect its orders and regulations, and fix their compensation.” Under this authority the board may employ counsel, district or ward physicians, sanitary officers, inspectors, experts, guards, watchmen and laborers. It frequently occurs that guards or watchmen are required to enforce quarantine regulations in cases of contagion. Again, laborers are required to perform the labor of abating a nuisance. In cities and the larger villages especially inspectors are constantly required, and in many instances boards may require legal advice. The provisions of the statute above quoted are authority for the employment of the persons or employes named.

§ 11. **Local boards; orders and regulations.**—Every local board of health “shall make and publish, from time to time all such orders and regulations as they may deem proper for the preservation of life and health, and the execution and enforcement of the Public Health Law in the municipality.” These rules should be reasonable and of general application. The State Department of Health have formulated a complete set of regulations which are suggested for adoption by local boards. These forms may be found in chapter IV, *post*, under title “Sanitary Regulations.” They should be published in such manner as to give them general publicity. This may be done by publishing them in a local newspaper or by posting them in the form of placards in

public places, or even by mailing copies to the inhabitants of the municipality. As a local board of health is continuous, changing only a portion of its membership each year (in towns each two years), rules once adopted may be considered permanent, subject only to amendments; but they should be frequently published in some manner to keep the public informed.

In the adoption of general rules and regulations which have the force of laws enacted by the legislature, a board of health should not prescribe penalties so unreasonably large as to be unjust nor so unreasonably small as to incur ridicule and willful disobedience and violation. A reasonable regulation promptly and firmly enforced will be found more effective than the enactment of extreme penalties, which are never enforced.

§ 12. **Local boards; penalties.**—Local boards of health are authorized to “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.” In fixing penalties it is most essential that the penalty be definite and certain in order to be effective; that is, if a penalty of twenty-five dollars is intended, so state it; not that the penalty is “not to exceed twenty-five dollars.” A penalty fixed on a “sliding scale” cannot be enforced.

See *McNall v. Kales*, 61 Hun, 231; note under § 21, *ante*.

§ 13. **Local boards; special orders.**— It frequently occurs that a special order is required for the suppression of a nuisance or concerning other matters, in the judgment of the board, detrimental to the public health. Such orders are not required to be published, but copies should be served upon the owner or occupant of premises whereon such nuisance may exist, or posted in some conspicuous place thereon. Before making any final order (except in extreme cases), notice should be given the owner or occupant and an opportunity given him to abate the nuisance or remedy the defect complained of.

§ 14. **Local boards; hearings; subpoenas, etc.**— Boards of health are frequently called upon to determine questions that arise under a complaint in which, by reason of conflicting statements, the truth cannot be ascertained without an examination of witnesses under oath. For such purpose the statute authorizes the board to “issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it (the board) has the same power as a justice of the peace in a civil action.” One of the members of the board should be designated by resolution to sign and issue subpoenas, and no subpoena can be served outside of the jurisdiction of the board issuing it. After hearing the evidence the board may decide upon the questions before it. It is not unusual for boards to refer such questions to a committee for

hearing, but in such case the committee must report the whole evidence to the board for decision.

For resolution and subpoena, see Forms Nos. 5 and 6, *post*.

§ 15. **Local boards; warrants.**—The power is given to local boards of health to issue warrants against such persons as cannot be otherwise subjected to its orders or regulations.

The issuing of a warrant may be required when the board, its health officer, inspectors or employes are denied admittance to a building for the purpose of inspection or for the abatement of a nuisance, or removing causes of sickness, or any lawful purpose. Or, in case of an epidemic, it may be found necessary to cause the removal of whole families or the entire population of a tenement to prevent the spread of contagion.

See Forms Nos. 13 and 14, *post*.

The proceedings for issuing a warrant should substantially follow the practice in criminal cases. Information on oath should be laid before the board, that an offense has been committed and giving the name of the offender. A resolution, reciting the substance of the complaint and authorizing the issuance of a warrant by the president and secretary of the board should then be adopted and entered in the minutes of the board. A record of all proceedings under the warrant should be

kept as a protection to the board and for the information of the public.

§ 16. **Local boards; actions.**—All actions for penalties must be brought in the name of the municipality in which the penalty is incurred. The board of health is authorized to maintain actions to restrain violations of its orders, and it may also proceed by mandamus to enforce certain orders. Those matters however are always subject to the advice of counsel.

§ 17. **Local boards; vital statistics.**—Every local board of health shall supervise and make complete the registration of births, marriages and deaths \* \* \* in accordance with the methods and forms prescribed by the State Department of Health. The "forms" for these purposes are not only prescribed by the State Department, but are furnished to local boards for the use of magistrates, clergymen, physicians, midwives, etc., and no certificate will be accepted by the State Department except upon the blanks so furnished by it. This requirement is not unreasonable when a little thought is given to the immense number which the department has to handle and the importance of systematic arrangement for future reference. When a certificate is delivered to the local registering officer it should be immediately recorded and forwarded to the State Bureau of Vital Statistics at Albany, not later than the fifth of the following month.

The duties of local boards of health with reference to vital statistics are of the utmost importance and the necessities for perfect registration of births, marriages and deaths are constantly increasing. Yet, notwithstanding the ample provisions of the law and the benefits which may result from perfect registration, it is a fact that a large percentage of births in particular go unregistered. The necessity then, for energetic and effective action on the part of local boards to bring about the results designated by the statute, is quite apparent.

Section 22 of the Public Health Law provides that "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." No penalty is prescribed by the statute for a failure to comply with the provisions above quoted. But boards of health have the power and it is their duty to prescribe a penalty for any neglect on the part of a physician, clergyman, undertaker, or other person, whose duty it is to furnish facts for registration; and attention is called to sections 14 to 17, inclusive, of the Sanitary Regulations (chapter IV, *post*) recommended by the State Department of Health. The usual penalty



for a neglect of duty in this respect is five dollars, and a smaller sum in addition for each additional period of neglect. Thus it will be seen that the power to compel the return of certificates of births, marriages and deaths, lies directly with the local board. If each board would adopt these regulations and then for any violation enforce the penalty it fixes, there would be but little difficulty in securing full and prompt returns of the original certificates of all births, marriages and deaths occurring within its jurisdiction.

**§ 17a. Local boards; vital statistics; duties of registering officer.**— In addition to the general duty of registering births, deaths and marriages and forwarding the original certificates to the State Department, numerous special duties, incidental to the general duty, are imposed upon registering officers, and careful attention to these duties will greatly aid the department in making perfect its system of registration.

To aid registering officers in the discharge of their duties the following suggestions for their guidance are made:

A careful observance of these suggestions will obviate much correspondence and delay.

In forwarding certificates of births, marriages and deaths, they should always be accompanied by a card stating how many certificates of births, marriages and deaths are sent, and for what month and the name of the municipality and your own name.

The registering officer should send one of these cards every month, even if there should be no certificates to send. The form of return card is as follows:

## MONTHLY RETURN OF VITAL STATISTICS.

Board of Health of.....  
Post-office .....

New York State Department of Health

Bureau of Vital Statistics, Albany

Herewith I forward returns of Vital Statistics, as follows, for month ....., 190 .

Birth Certificates .....  
Death Certificates .....  
Marriage Certificates .....  
....., Registrar.

Fill out blank spaces on this card with city, town or village, post-office, number of certificates and name of registrar. A card must be sent each month with the certificates. If there are no certificates, so state, sending card as usual. Towns and incorporated villages *must be reported separately*.

If there be no certificates of either kind **do not** draw a line in the space nor leave it blank, but fill it in with zero (o).

Whenever a return of a birth is made before a name is given the child, the registering officer should furnish to the parent or custodian of the infant, a card (see form No. 21, *post*), upon which such parent or custodian may make return of the given name of the child. Upon its receipt, the registering officer should enter the name of the child in its proper place, and forward the name card to the Bureau of Vital Statistics, at Albany, where the proper entries will also be made.

It is the duty of the registering officer to see that this card is returned to him, in order that the registry may be perfected. In sending out the card he should call attention to the urgent necessity of its prompt return.

All certificates must be written plainly and with unfading ink.

As the birth, marriage, and death certificates returned to the State Department of Health constitute a permanent official record in the Bureau of Vital Statistics for the use and information of future generations, the reason of this requirement can readily be seen. The registering officer should therefore insist in all cases upon a strict compliance with this request by all persons making returns to him.

Towns and incorporated villages must be reported separately.

This requirement must be strictly complied with. It frequently happens that the registering officer of a town and of a village within the town is the same person,—as when the boards of health of a town and an incorporated village therein unite. The registering officer should use extreme care in making separate returns to the State Department. Note carefully the last sentence of section 29 of the Public Health Law.

No credit will be given until defective certificates are properly corrected.

Registering officers are required to return all certificates for each month between the first and fifth of the following month. If all are correct a receipt for the entire lot is given and this receipt is a voucher upon which the registrar receives his compensation from the municipality. If one or more certificates are defective they are at once returned for correction. In such case the receipt is withheld until the corrected certificate is returned.

In forwarding certificates do not fold them, but send them flat in envelopes furnished.

Certificates of birth, marriage, and death are so arranged as to be conveniently bound for permanent record. If kept flat they are more easily handled and kept in place better than if folded.

Use only such birth, marriage and death blanks as are supplied free upon application to the department.

The purpose of this requirement is to secure uniformity in the certificates both as to size and quality of paper necessary for permanent record.

Death certificates where no physician was in attendance should have an affidavit attached, stating the circumstances of death.

No burial permit can be granted until the death has been certified by the physician or coroner, or by an affidavit stating the circumstances of death, sworn to by some credible person. When such affidavit is made it should be returned with the certificate to the State Department.

Fill out the blank spaces in the upper left hand corner of the certificates with the name of the county, and the town, village or city.

This requirement is necessary as a matter of convenience, especially is making searches, and compliance therewith will save a return of certificates for correction.

Registrars are requested to see that all certificates that are handed to them to be forwarded to the State Department are properly filled out in all respects.

Upwards of fifteen hundred defective certificates are annually returned for correction. This number can be largely reduced if registrars will exercise care in this respect. *Every blank space should be filled.* If a fact is unknown, it should be so stated.

Death certificates must have the name of the deceased written in full. Initials only *will not be accepted*. In case of a woman the *maiden name* must be given.

If the deceased is a married woman, do *not* use the husband's name, as, for instance, Mrs. Thomas Smith; but give the full given name, as Mary Elizabeth Smith, or Mary Elizabeth (Jones) Smith.

Marriage certificates must have the signatures of the witnesses written on both sides, as well as the signature of the person performing the ceremony.

Witnesses sign on the back of the certificate as witnesses to the signatures of the bride and groom; and sign the certificate itself as witnesses to the marriage.

Where the names of the person or persons on the certificate are difficult to be read and are shown to the registrar, he should write them out plainly underneath so that no mistake may be made in the records.

The purpose of registration is to make a perfect record of the facts certified, and a registering officer can greatly aid the department by a little care in this particular.

**§ 18. Local boards; burial and burial permits.**— Regulations must be made by local boards for the burial and removal of corpses, and they shall designate the persons who shall grant permits for burial and for the transportation of any corpse which is to be carried beyond the county where death occurred. The person designated by town boards of health to issue burial permits is usually the town clerk. The statute requires the undertaker to procure and present to the local board or person designated a certificate of death, and thereupon obtain a permit before burial or removal. In the country districts this is frequently inconvenient, as a strict compliance with the statute will very often involve miles of travel and some expense. Such inconvenience may be avoided to a considerable extent by designating every justice of the peace, as well as the town clerk as

a person to issue burial permits. The certificate of death may then be delivered to the one most convenient and by him filed with the clerk. If a permit is required for transportation on any railroad or passenger steamboat and the cause of death shall have been from a contagious or infectious disease, the board of health may require that the corpse be enclosed in a hermetically sealed casket of metal or other indestructible material.

The forms of transit permit and size and color of paper are prescribed by the State Department of Health, and may be obtained from publishers of blanks. These forms also have printed on the back full instructions to undertakers, embalmers, and transportation companies, with reference to the preparation and transportation of the bodies of deceased persons.

**§ 19. Local boards; contagious and infectious diseases.—**

The statutory requirements in regard to contagious and infectious diseases are very explicit, and a careful study of section 24 of the Public Health Law is all that may be required as a safe guide to boards of health with reference to such diseases. The local board may incur expense in the performance of its duties 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 are not otherwise provided for, and such expense is a charge upon the city, village or town, as the case may be.

By reference to section 9 of Sanitary Regulations it will be seen that physicians may be required to make prompt report to the board of health of all contagious and infectious diseases under his care. Such a duty on

the part of a physician ought never to require the imposition of a penalty to compel its enforcement. But such is too often the case, and the physician who is called to attend a patient with a contagious or infectious disease and fails to notify the health authorities so that proper precautions may be taken to prevent its spread, is guilty of criminal neglect and should be punished with the extreme penalty.

There have been instances where a case of small-pox, in its early stages, has been deliberately transferred from one municipality to another. It matters not how or from whence it comes, it is the duty of the local board to act promptly in the interest of the public. The case becomes fully developed and the law requires the isolation of the patient. Beyond the duty imposed by the Public Health Law the local board should at once notify the overseer of the poor of the town or city of the circumstances in order that proper action may be taken under the provisions of the "Poor Law" (see Heydecker's General Laws, chapter XXVII, also Cumming & Gilbert's Poor Laws, Penal Code, § 675a), for the recovery of penalties against the offending parties and take such proceedings as may be advised for the recovery of the expenses incurred from the municipality from whence the case was transferred.

**§ 20. Local boards; nuisances.**—It is made the duty of boards of health to "receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health." For the purpose of making the necessary examinations to determine whether a nuisance exists, the board or the health officer or any person designated by it may inspect and examine any premises complained of or where a nuisance is suspected, and owners, agents and occupants of premises are required to permit such inspection or examination to be made. The results and conclusions of such inspection must be furnished to such own-

ers, agents and occupants, and if it is determined that a nuisance or conditions detrimental to health exist, the board must order the removal of such conditions. Before making a final determination as to a nuisance, the board should give reasonable notice to the person against whom the decision will operate and give him an opportunity to remedy the defect complained of or to otherwise defend himself. The failure or omission by the board to give such notice may be cause for a setting aside of its order or defeat the recovery of a penalty.

§ 21. **Local boards; nuisances, what are.**—It is not every nuisance under the law that boards of health are required to examine. They can only deal with those nuisances affecting life and health. An enumeration of all acts and conditions which might be declared nuisances under the Public Health Law is impossible. Neither is it practicable to give a perfect technical definition of what may constitute a nuisance under such law, as a use of property in one locality or under some conditions may be perfectly lawful, which under other circumstances would be safely denominated a nuisance. So it will readily be seen that boards of health, in the performance of their duties, must not be over-zealous and declare a thing a nuisance which is not, as such an act would be unauthorized. It is only when the board is satisfied that the matter complained of is detrimental to life or health or likely soon to become so, that it can lawfully make the order for its suppression or re-



moval. If the effect of the act complained of is simply an annoyance to the complainant, not affecting health, it may be a private nuisance, for which the complainant may have his remedy in an action at law; but with such the board of health has nothing to do. However, when a complaint is made, the board is bound to act; it has no discretionary power in that particular and its final determination should be according to the facts found to exist. The rule is the same in regard to municipal property as in case of private property. The board must act and remedy the defect, even to the laying of a sewer if that is the only safe method of abating the nuisance. (*Gould v. Rochester*, 105 N. Y. 46.)

See also *Regan v. Fosdick*, 19 Misc. 489, 492; *Van Wormer v. City of Albany*, 15 Wend. 262; *Coe v. Schultz*, 47 Barb. 64; *Metropolitan Board of Health v. Heister*, 37 N. Y. 661; *Matter of Ryers*, 72 N. Y. 7; *Health Dept. v. Dassori*, 21 App. Div. 641; notes under § 21, chapter I, *ante*.

As a local board of health is invested with the power to enact sanitary ordinances having the force of laws within their respective jurisdictions (*Polinsky v. People*, 73 N. Y. 65), the power conferred necessarily involves the exercise of discretion. (*People v. Board of Health*, 33 Barb. 344. See notes under § 21, chapter I, *ante*.) That is to say, while there is no distinction in the statute as to the power and the right to summarily abate nuisances both of private creation, such as offensive privies, etc., and those of quasi-natural sources, such as ponds of stagnant water, yet the power conferred is discretionary as to the manner of abatement. To illustrate: A pond of stagnant water on private property may arise from purely natural sources, as surface water flowing into a natural depression; again it may be caused by the act of the owner in filling in portions of his property; still again it may be caused by the municipal authorities in making public improvements, as the grading of streets or improvement of a highway. In such cases the board must use a reasonable discretion and be governed by the circumstances of the particular case. (See *People ex rel. Govers v. New Rochelle*, 17 App. Div. 603; first note under § 25, chapter I, *ante*.)

§ 22. **Local boards; removal of nuisances by.**— If the owner or occupant of any premises fails to comply with an order of the board of health for the suppression or removal of a nuisance or other matter, duly made, served or posted, such board, its servants or employes may enter upon such premises and suppress or remove the same; and the expense thereof shall be paid by the owner or occupant of the premises or by the person who caused or maintained the nuisance. It may be found necessary, in the performance of this duty, to destroy property. (*Smith v. Irish*, 37 App. Div. 220), or in another instance to improve property (*Health Dept. of N. Y. v. Rector, etc., of Trinity Church*, 145 N. Y. 32). But whatever the act required to suppress the nuisance, it should only be determined after an orderly proceeding and by “due process of law.”

§ 23. **Local boards; removal of nuisances; procedure.**— Local boards of health are clothed with extraordinary powers. Their duties are legislative, judicial and executive in their nature; legislative when they make and adopt orders and regulations; judicial when they sit in judgment upon alleged violations of their orders, and executive when they enforce their own decrees. Every person against whom complaint is made has the constitutional right to be heard in his own behalf. Otherwise, judgment against him is not “by due process of law.” The procedure leading up to the suppression or removal of a nuisance should be something like this:

We will assume that the board has made and pub-

lished its general orders and regulations. A complaint is made to the board that the condition of premises owned or occupied by A. B. is a menace to health by reason of certain facts stated. (See Form No. 7, *post.*) The secretary of the board should enter the complaint in a book kept for that purpose and immediately refer the matter to the health officer or inspector for examination and report. (See Form No. 8, *post.*) Upon report in writing by the health officer or inspector (Form No. 9, *post.*), notice should be served upon the owner or occupant stating that complaint has been made to the board of health that premises occupied by him are a menace to health by reason of the conditions found to exist (stating them) and requiring him to abate the nuisance within a certain time, usually three days, or further proceedings will be taken under the Public Health Law. (See Form No. 10, *post.*) A. B. pays no attention to this notice. He should then be cited to show cause before the board, at a time and place stated, why the penalty prescribed by the general orders of the board should not be enforced against him and his property condemned as a nuisance. (See Form No. 11, *post.*) This citation should be served by delivering a true copy, and at the appointed time and place the board sits as a court.

Whether the person cited appears or not the board has now full and complete jurisdiction to proceed. The complaint is stated and the report of the inspector read. If the defendant is not present, nothing further is nec-

essary except to make proof of service of the citation and that the party has not complied with it. The board is thus ready to pass judgment. If, however, the defendant does appear and in any manner controverts the statements of the complaint, a more formal trial is necessary. Witnesses may be required who may be examined under oath. The defendant may put in his defense, after which the board passes judgment by resolution in such form as it may deem proper. If it finds that a nuisance exists it should recite the facts of the complaint and the proceedings before the board and close with an order declaring the nuisance and directing the defendant to abate it within a certain time, or in default the same will be abated at his expense. (See Form No. 12, *post.*) If the defendant fails to obey this order the health officer may enter upon his premises with such aids as may be required to do the work necessary.

The board may then bring action in the name of the city, village or town to recover for the expense of removal of the nuisance; also for any penalties incurred.

There may be instances where the necessity of prompt action is so great that the board may order the destruction of property without awaiting an investigation. An inspection may show conditions so dangerous that the delay of a formal investigation would imperil the health of the whole community. In such a case the board should not hesitate. (*Wynehamer v. People*, 13 N. Y. 451; *Coe v. Schultz*, 47 Barb. 64.)

**§ 24. Local boards; lien and collection of judgment.—**

If execution upon a judgment for the recovery of the expense of the suppression or removal of a nuisance is returned unsatisfied, such judgment shall be a first lien upon such premises, having preference over all other liens and incumbrances. The method of procedure for the enforcement of such lien is very clearly stated in section 27 of the Public Health Law, but it is advised that proceedings under this section should not be undertaken except under advice of counsel. In case an occupant, not being an owner of premises sought to be considered as a nuisance, is the wrongdoer, the owner should also have notice of all proceedings, for it would be a most extreme hardship for an owner to have his property condemned and sold without his knowledge and for an act for which he is not responsible.

The procedure for enforcing the lien of a judgment recovered for the expenses of the removal or abatement of a nuisance is somewhat akin to the proceedings for the foreclosure of a mortgage by advertisement. Being a statutory proceeding, every requirement of the statute must be strictly followed.

See Forms Nos. 25, 26, 27, 28, *post*.

**§ 25. Local boards; joint jurisdiction.—**A town board of health cannot have jurisdiction over that portion of the town included in a city or incorporated village, nor can such city or village board have jurisdiction over any part of a town except within its own limits. But, with the approval of the State Department of Health, the boards of health of any town and incorporated villages therein or two or more towns and the incorporated vil-

lages therein may unite in a combined sanitary and registration district. This provision of the statute is in the interest of economy, and in case of a town and a village within its limits should be very satisfactory, as their interests are, to a considerable extent, common. It is an easy matter for such boards to combine, because, as a rule, their meetings will always be held in the village as a matter of convenience; but the propriety of the boards of two or more towns combining and traveling from one town to another for their meetings should be well considered.

**§ 26. Local boards; manufactories in tenement houses.—**

The manufacture of certain specified articles of clothing is prohibited in rooms in tenement houses or dwellings, used for eating or sleeping purposes, except by members of the family living therein; and boards of health are required to appoint special inspectors to see that the provisions of the section (28) are rigidly enforced. This section of the statute gives to boards special power over a class of people whose habits of life invite rather than repel disease. If the board of health or an inspector finds evidence of infectious or contagious disease present in a workshop of this kind the board may order the destruction of such articles therein as may be necessary to protect the public health. The board may make such rules and orders as it deems necessary in respect to tenement house manufactures.

**§ 27. Local boards; expenses, how paid.—** All expenses incurred by any local board of health in the perform-

ance of its duties are a charge upon the municipality and shall be audited, levied, collected, and paid in the same manner as other charges against the municipality. In these matters, as in case of statutory fees of certain officers, the auditing board have no discretion if the amounts are reasonable. The compensation of the health officer and all employees being fixed by the board of health, the amounts must be audited at such sums. The board of health, however, would exceed its authority if it fixed the compensation of a day laborer at \$25 per day, for instance, and in such case the auditing board would be sustained in auditing the claim at a reasonable amount. The limit of power of a board of health in creating expenses is governed only by circumstances of each particular case. Suppose a case of small-pox develops in a town. It is likely to be and is communicated to others. Fifty or more cases develop. The board of health has its duty to perform in the interest of the public. Like a nation making or receiving a declaration of war, it cannot and must not stop to inquire, "What will it cost?" It must proceed with the duty imposed by the statute, and the auditing board must provide for the expense. (*Kent v. Village of North Tarrytown*, 50 App. Div. 502; *Matter of Plattsburgh*, 157 N. Y. 86; *Malloy v. Board of Health*, 60 Hun, 422; notes under § 30, chapter I, ante.)

**§ 28. Local boards; how compelled to act.**—The duties of local boards of health and of municipal authorities in providing and supporting a board of health, as set

forth in the statute, are mandatory. All the provisions of the law must be obeyed. In case of an omission of any duty, on the part of any official or set of officials, under this act, that duty may be compelled by mandamus at the instance of the State Commissioner of Health, a local board of health, or any citizen of a municipality of full age. (See *People ex rel. Boltzer v. Daly*, 37 Hun, 461; *People ex rel. Govers v. New Rochelle*, 17 App. Div. 603; notes under § 31, chapter I, *ante*.)

**§ 29. Local boards; adulterations; duties.**—No person shall, within the State, manufacture, produce, compound, brew, distill, have, sell or offer for sale any adulterated food or drug. (§ 41.) And it is the duty of all health officers to seize and destroy all such articles of food as are prohibited, wherever found. A careful study of article III, §§ 40 to 50, of the Public Health Law is necessary on the part of every health officer in order that he may act promptly and intelligently when occasion demands.

**§ 30. Local boards; duties under Labor Law.**—Local boards of health have a special duty under the provisions of the Labor Law (L. 1897, ch. 415), articles VI and XI, §§ 70-74 and 162-166. That law provides that no child under the age of fourteen years shall be employed in any *factory* in this State, and that no child between fourteen and sixteen shall be so employed unless a certificate executed by a health officer be filed in the office of the employer. (§ 70.) It is also provided



that no child under sixteen shall be employed in any *mercantile establishment*, unless provided with such certificate. (§ 162.) Such certificate is to be issued by the local health officer or other officer designated by a resolution of the board for that purpose, upon an affidavit of the parent or guardian of the child showing the date and place of birth of such child. (§§ 71, 163.) Such certificate must state the date and place of birth of the child, describe the color of the hair and eyes, the height and weight and any distinguishing facial marks, and that, in the opinion of the officer issuing the certificate, such child is upward of fourteen years of age and physically able to perform the duties of the work which he intends to do. (§§ 72, 164.) Before issuing such certificate it must appear to the board or officer that the child has attended school or has been otherwise instructed (§§ 73, 165), which statement shall be furnished to such child or board of health by the principal of a school or teacher. (Id.)

See Forms Nos. 29, 30, 31, *post*.

Women and children must not be employed to work in basements of mercantile establishments unless permitted by the local board of health (§ 171), and the duty is imposed upon such local boards to enforce the provisions of such law (article XI) and prosecute all violations thereof. (§ 172.)

**§ 31. Local boards; miscellaneous.**— There are still other duties of boards of health and health officers not speci-

cally referred to in the preceding sections, and attention is here called to some of the more important. Boards of health are to be kept informed as to the condition of institutions for orphans and destitute children and to have supervision over the management and sanitary conditions thereof. They have also a special duty with reference to the supply of vaccine virus and in compelling the vaccination of school children in case the school authorities do not act. They have power to enter any place for the purpose of examination with reference to sanitary conditions and have supervision over plumbing, drainage and ventilation of buildings and the water supply of a city or village. And above all a board of health should keep a perfect record of all its proceedings. Such a record is necessary for the board's own protection in many instances, as it furnishes presumptive evidence of the facts set forth.

§ 32. *In conclusion.*—Boards of health and health officers should always study carefully the statute from which their authority to act is derived. The preceding sections of this chapter have been written in the hope that some aid may be given to a clear understanding of the provisions of law, and that they may serve as a guide to the local officer when stumbling through the dark mazes of statutory provisions. If such shall be the result, the writer is content.