

APPENDIX II

USE OF THE REFERENCES

Limitations of space in a book of this nature do not permit of a complete exposition of every point involved in public health law. There are, accordingly, many references to authorities where more complete information on particular subjects may be obtained. These references are of considerable value and should be freely consulted by readers who desire to study more intensively any of the various phases of the legal side of sanitary science. An endeavor has been made to select these references carefully and with due regard to accuracy, authenticity, reliability, and modernity. They may be said, in fact, to be one of the features of the book.

Legal References in General

Legal references may be divided into two classes: those of primary authority, and those of secondary authority. In the former division are constitutions, statutes, and the decisions of courts of final appeal, these latter forming, as explained in Chapter I, a part of the unwritten or common law. References of secondary influence include textbooks, encyclopedias, articles, and the obiter dicta, or collateral and not material opinions of judges. Sometimes a textbook written by a great lawyer, a work which has stood the test of time and has been frequently cited by the courts, may be included among the references of primary authority, though such instances are rare. Examples are the *Commentaries* of Blackstone and of Kent and such books as Dillon's great work on *Municipal Corporations*. Textbooks and encyclopedias are, generally speaking, restatements of the law as deduced from the opinions of the court, with an occasional discussion of certain points by the author of the book.

Court Decisions

Decisions of courts of appeal are of primary importance in that they lay down the broad principles of law which are applicable to a given set of facts. By the doctrine of *stare decisis*¹ (literally, "let the decision stand") a court decision becomes a precedent and will, as a general proposition, be followed by subsequent decisions of the courts of the same State. Thus, an early case decided in Illinois in 1897 held that

1. "A solemn decision upon a point of law, arising in any given case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it be shown that the law was misunderstood or misapplied in that particular case." Kent's *Commentaries*, p. 475.

vaccination could not be required as a condition precedent to attendance at school except in emergencies, and three subsequent cases, decided in 1899, 1908, and 1924 have followed this same rule. Since there are forty-eight state courts of last resort, as well as federal and territorial courts of appeals, it is natural that there should be some conflict in the decisions on various matters, for each State is sovereign unto itself within the limitations of the Federal Constitution. This divergence of viewpoints is exemplified to some extent in the decisions on vaccination, as outlined and listed in Chapter XIV. The opinions of a particular court of last resort are binding only upon the courts in the State in which they are delivered, but they may have some weight in other States and may be followed if no similar situation has arisen resulting in a different adjudication in the other State.

In this book over 1,200 court decisions are cited, practically all from the courts of last resort of the several States and the Federal Government. A decision of a court of intermediate appeal may also be of value, especially if it has not been carried beyond that court or if it has been affirmed by a higher one. All the court decisions in this volume have been consulted and are cited because they apply to the point under discussion. A reader who is interested in a particular proposition and who wishes to utilize the information given and the cases referred to should always read the decision in full, however, and not take it for granted that it applies exactly as stated.

References to the reports in which the court decisions may be found have been made as complete as possible, in most instances several citations being given. Thus, if a health officer or attorney has access to one set of law reports and not to another, by having references to both he may consult readily that which he does have at hand. For instance:

Blue v. Beach (1900), 155 Ind. 121, 56 N.E. 89, 80 A.S.R. 195, 50 L.R.A. 64.

means that this case, decided in 1900 by the Indiana Supreme Court, may be found in volume 155 of the Indiana State Reports at page 121, in volume 56 of the Northeastern Reporter at page 89, in volume 80 of the American State Reports at page 195, and in volume 50 of the Lawyers Reports Annotated at page 64. Every State has its official volume of court decisions in which practically all its court decisions are given. In addition, there is the National Reporter system, which covers the entire country with a series of reporters known as the Atlantic, Pacific, Northeastern, Northwestern, Southern, Southeastern, Southwestern, and Federal. Prior to 1919 there were also a number of other independent state reports, but these have now been consolidated in the American Law Reports Annotated, which give selected ruling cases, with notes and valuable discussions. As will be noted in

the references, the various reporters are cited by their initials, as 10 A.L.R. 40, etc. If only one reference is given with a court decision, it means either that it may be found in only that one reporter or that the author, for various reasons, was unable to locate other citations.

The dates of all cases are given for convenience. This is useful information, but it should be remembered that age is not necessarily a criterion of the value or weight of a court decision. A principle of law decided in 1847 may be just as sound today as it was then and may still be followed as the authority. On the other hand, a decision in 1874,² to the effect that an order by a health officer requiring the removal of the wall paper from a room occupied by a smallpox patient was a reasonable exercise of authority, might be seriously questioned today in the light of the modern conception of the unimportance of possibility from fomites-borne infections. Later cases are sometimes especially valuable in that they summarize and discuss all the previous decisions and deduce the modern line of reasoning to be followed. This is particularly true, perhaps, of court decisions pertaining to public health. Courts have sometimes been accused by laymen of not keeping abreast of modern scientific developments. This may be so to some degree, but it can be stated as a general proposition that the courts give cognizance to recognized progress in scientific attainment and social advancement and modify their principles and precedents to fit modern conditions.

The court decisions cited in this book are, therefore, of great value as reference and source material. Some of them are excellent essays on public health procedure. Unfortunately, it has not been possible to cite every case applicable to public health law and there are probably about three times as many in the aggregate as it has been feasible to mention. It will be noted that there occasionally occur in this book references to places where additional cases may be found cited, as, for instance:

12 *Ruling Case Law* 1271, and cases cited

or

12 *Corpus Juris* 904, and cases cited.

Such references are to encyclopedias of law, legal digests, annotated reporters, textbooks, or articles, where other pertinent cases may be found listed. In connection with the volumes of state reporters there is usually a digest, arranged according to subjects. By consulting this digest under appropriate headings, such as "Health," "Food," "Municipal Corporations" and the like, all the cases applicable, to the date of publication of the digest, may, as a rule, be found. Of national scope in a similar capacity is the American Digest system, which attempts to list and abstract all the American court decisions under appropriate

2. *Seavey v. Preble* (1874), 64 Me. 10.

subjects. There is a section on "Health" and there are also many other sections where decisions applicable to some aspect of public health may be found.

One final point should be remembered with regard to court decisions as references. Sometimes a later case may overrule an earlier one, though this is by no means a usual occurrence. The legislature may also upset a principle of law laid down by a court by passing a statute directly contrary to it. This may be done by the legislature provided no constitutional question is involved. Thus, a court may hold that under existing law health authorities have exceeded their powers by requiring, let us say as a hypothetical case, purification of water supplies for human consumption. The legislature may then determine as a matter of fact that such purification is essential to the public health and may therefore by statute specifically empower health officers to deal with the situation.

The court decisions cited in this volume were, so far as we know, all of good authority at the time of going to press. A complete index of cases is given on page 387.

Books and Articles

Since public health is an extensive subject, many references are given to books, pamphlets, and articles in which more comprehensive information may be found on specific topics. The leading modern texts, in the opinion of the author, have been listed in the Selected Bibliography in Appendix III. These references will be of practical value to health officers and attorneys who desire a more complete exposition of some aspects of public health than it is possible to present within the limits of space of this volume.

Key to Abbreviations

Citations given for various court decisions are abbreviated as follows:

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| A. | Atlantic Reporter (1885 to date) |
| A.L.R. | American Law Reports (1919 to date) |
| Am. Dec. | American Decisions (1760-1869) |
| Am. R. | American Reports (1870-1887) |
| Ann. Cas. | American Annotated Cases (1912-1918) |
| A.S.R. | American State Reports (1887-1911) |
| Ct. Cl. | Court of Claims (U.S.) |
| F. | Federal Reporter (U.S.) (1880 to date) |
| F. Supp. | Federal Reporter Supplement |
| L. Ed. | Lawyers Edition, U.S. Supreme Court Reports (1790 to date) |
| L.R.A. | Lawyers Reports Annotated (1888-1905) |

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| L.R.A. (N.S.) | Lawyers Reports Annotated, New Series (1906-1914) |
| N.C.C.A. | Negligence and Compensation Cases Annotated (1912 to date) |
| N.E. | Northeastern Reporter (1885 to date) |
| N.W. | Northwestern Reporter (1879 to date) |
| N.Y.S. | New York Supplement (1888 to date) |
| P. | Pacific Reporter (1883 to date) |
| S. Ct. | Supreme Court Reporter (U.S.) (from 106 U.S. to date) |
| S.E. | Southeastern Reporter (1887 to date) |
| So. | Southern Reporter (1886 to date) |
| U.S. | U.S. Supreme Court Reports (1875 to date) |

The volume of reported decisions has grown so great that most of the National Reporter series have been issued in a second series. These are indicated by the symbols: A. (2d), F. (2d), N.W. (2d), S.E. (2d), etc. There are also second series of a number of the state reports.

The state reports are listed according to the usual abbreviation of the respective states. Where the citation is Mo. App., Ga. App., Ind. App., La. App., etc., it means that the case was decided by an intermediate appellate court. Pa. Super. means that the case was decided by the Pennsylvania Superior Court, a court of intermediate appellate jurisdiction. App. Div. means the Appellate Division of the Supreme Court of New York, which is also a court of intermediate appellate jurisdiction. Misc. means the Miscellaneous Reports of New York State.