

## CHAPTER IV

### STATE HEALTH ORGANIZATION

THE success or failure of any government," wrote the Governor of New York in 1932, "in the final analysis must be measured by the well-being of its citizens. Nothing can be more important to a state than its public health; the state's paramount concern should be the health of its people."

With these words the Honorable Franklin D. Roosevelt began a fifteen-page foreword to a comprehensive report on the administrative and legal aspects of public health in New York State.<sup>1</sup> This report, submitted to the Governor on December 31, 1931, had been prepared by a distinguished health commission under the chairmanship of Dr. Livingston Farrand. It contained numerous recommendations for improvements in local health administration, many of which have since been adopted.

The doctrine that the health of the people is the paramount concern of the State is now widely recognized and generally accepted. In its administrative application, however, there has been a decided lack of uniformity in public health legislation and in public health practice in the forty-eight sovereign States of the United States.<sup>2</sup> There have been, likewise, marked differences in the extent and the efficiency of public health administration in the States.

More uniform have been the decisions of the courts on public health matters. Despite some divergencies in these judicial opinions, the courts have been liberal in upholding all reasonable public health measures. Not only have the courts followed intelligent precedents, but they have kept pace reasonably well with the advance of science in its application to public health procedures.

#### *State Health Departments*<sup>3</sup>

Since the creation of the first state board of health in Massachusetts in 1869, every State and each of the nine Canadian provinces has

1. *Public Health in New York State*, Report of the New York State Health Commission, Albany, State Department of Health, 1932. A report of a similar nature was submitted in Massachusetts in 1936: *Report of the Special Commission to Study and Investigate Public Health Laws and Policies*, December 2, 1936 (Massachusetts House Document No. 1200).

2. J. A. Tobey, Public health legislation, *Am. J. Pub. Health*, 27:786, August 1937.

3. *Health Departments of States and Provinces of the United States and Canada*, (Continued on next page.)

provided by law for the organization of a state or provincial health department. Historically, local health organization preceded state and provincial health organization in North America by more than half a century. The central control of state health activities is, however, conceded to be a desirable administrative procedure, although the extent to which such control may be exercised varies in the several States. In some it is virtually complete, while in others the power over the public health has been almost entirely delegated to local authorities.

✓The power of state legislatures to provide by law for state health departments having state-wide jurisdiction over the health of the people has been upheld by the courts on numerous occasions.<sup>4</sup> "It is now settled law," said the Supreme Court of Ohio in a leading case,<sup>5</sup> "that the legislature of the State possesses plenary power to deal with [health] so long as it does not contravene the Constitution of the United States or infringe upon any right granted or secured thereby, or is not in direct conflict with any of the provisions of the constitution of this State and is not exercised in such an arbitrary and oppressive manner as to justify the interference of the courts to prevent wrong and oppression."

The state health department usually consists of a state board of health and an executive officer, who is known as the state health officer, state director of health or public health, state commissioner of health or public health or health commissioner, secretary or secretary and executive officer of the state board of health, or superintendent.<sup>6</sup>

Instead of a state board of health, a public health council or board

Public Health Bulletin No. 184 (revised), U.S. Public Health Service, 1932. *Distribution of Health Services in the Structure of State Government*, Public Health Bulletin No. 184, 3d ed., U.S. Public Health Service, 1943.

4. *Sawyer v. State Board of Health* (1877), 125 Mass. 182. *Wilson v. Chicago Sanitary District* (1890), 133 Ill. 443, 27 N.E. 203. *Keefe v. Unton* (1903), 76 Conn. 160, 56 A. 571. *Munk v. Frink* (1905), 75 Neb. 172, 106 N.W. 425. *State Board of Health v. St. Johnsbury* (1909), 82 Vt. 276, 73 A. 58, 23 L.R.A. (N.S.) 766, 18 Ann. Cas. 496. *State v. Morse* (1911), 84 Vt. 387, 80 A. 189, 34 L.R.A. (N.S.) 190, Ann. Cas. 1913 B 218. *Shelby v. Cleveland Mill* (1911), 155 N.C. 196, 71 S.E. 218. *State v. Normand* (1913), 76 N.H. 541, 85 A. 899, Ann. Cas. 1913 E. 996. *Koeffler v. State* (1914), 157 Wis. 434, 147 N.W. 639. *State v. King County Superior Court* (1918), 103 Wash. 409, 174 P. 973.

5. *State Board of Health v. City of Greenville* (1912), 86 Oh. St. 1, 98 N.E. 1019, Ann. Cas. 1913 D 52. *Board of Health of City of Canton v. State* (1931), 40 Oh. App. 77, 178 N.E. 215.

6. *Directories of State and Insular Health Authorities*, issued annually since 1912 (except 1932) by the United States Public Health Service.

of public health advisors has been created in a number of States (Connecticut, Illinois, Maine, Massachusetts, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, and West Virginia). The functions of such a council or board are mainly advisory, although it may also be vested with code-making powers and sometimes with other duties. In several States and Territories (Idaho, Nebraska, Oklahoma, Alaska, and the Virgin Islands) there is neither a board of health nor a public health council, all powers of the state health department being administered by the health officer.<sup>7</sup> ✓

### *State Boards of Health*

✓ The state board of health is usually appointed by the Governor, its members, varying in number from three to fourteen, generally being appointed from different political parties for overlapping terms of from three to five years, although in some instances all terms expire simultaneously. In a few States there are ex-officio members, such as the Governor, Attorney General, Comptroller General, and Secretary of State. The state health officer sometimes serves as president or chairman of the board, sometimes as secretary, and sometimes merely as a member. In many States he is not a member of the board of health, but usually meets with it.

In two States, Alabama and South Carolina, the board of health is composed of the state medical society, which selects a small committee to act as the state board of health; in South Carolina a pharmacist nominated by the state pharmaceutical association is also appointed to the board by the Governor. In other States, the medical society often nominates medical members for appointment to the board.

The qualifications of members of the state boards of health vary greatly in the different States. In most instances, the medical profession must be represented, and in a number of States all members of the board must be licensed physicians who have had from five to ten ✓ years' experience in the practice of medicine. Other professions which are often required to be represented on state boards of health include ✓ those of dentistry, pharmacy, osteopathy, sanitary or civil engineering, law, and education. In some States it is required that one or more women shall be appointed to the board, and some provide that at least one member shall be a layman. The members usually serve without compensation, although allowed necessary expenses.

While no standards for state boards of health have been laid down

7. The term "state health officer" will be used to designate the executive head of the state health department.

by any authoritative body, it seems to be the consensus among leaders in the public health movement that an ideal state board of health or public health council would consist of from five to seven members, including one public health engineer, one lawyer, one woman or business man, one dentist, and from one to three experienced physicians. The state health officer, a physician, would serve in an ex-officio capacity on such a board. The interest and ability of the individuals who serve on any official board are, however, more important than what they may represent.

Adequate representation on a board of health of the medical profession, a group primarily concerned with the prevention and control of disease, is eminently desirable, but delegation of the supervision of state health work to an extra-governmental body such as a state medical society has been severely criticized. On this subject Dr. Charles V. Chapin has written:

As neither the people nor their representatives have a voice in the selection of the censors [of the medical society] or in the management of medical associations we have a form of organization which does not commend itself to many persons outside of the State. It is dangerous to delegate so important a function and there is no evidence that it can be as well performed by a medical society as by a department of the state government as ordinarily established.<sup>8</sup>

### *The State Health Officer*

The executive officer of the state health department is appointed by the Governor in about half of the States, and by the state board of health in the remainder. He is generally required to be a licensed physician who has had a certain number of years of experience in the practice of medicine. In many States, but not in all, he is also required to be versed or skilled in sanitary science and the public health. In a few States there is no legal requirement that the state health officer should be a physician, but it is stated in the law that he must be a qualified sanitarian; in several States no legal qualifications of any kind are given for this officer. In 1946 all the state health officers were physicians possessing the degree of M.D. With the exception of a relatively few nonmedical sanitarians who have served as state health officers, this has always been the case.

8. C. V. Chapin, *A Report on State Public Health Work*, Chicago, American Medical Association, 1915. The system of appointment of the state board of health of Alabama by the state medical association was, however, upheld by the Supreme Court of that State in 1920 in the case of *Parke v. Bradley* (1920), 204 Ala. 455, 86 So. 28.

The state health officer is the executive of the state health department. His term of office is generally fixed by law, and may be changed by the legislature at will.<sup>9</sup> He is usually required to devote full time to his duties; his compensation is customarily fixed by the statutes, and may also be changed at will by the legislature.<sup>10</sup> He may be removed by the appointing authority, but as a rule only after notice and a hearing.

#### *Recognition by the Federal Government*

State and local health departments have been recognized in acts of Congress from early times. Although Congress had passed a law in 1794 (1 Stat. 353) providing that when unusual conditions of disease existed at the seat of government Congress might meet elsewhere, the first real health law adopted by this body was an act of 1796 (1 Stat. 474) providing for federal cooperation with the States in the enforcement of the state quarantine laws. There were subsequent acts of Congress to the same general effect in 1799 (1 Stat. 619), 1832 (4 Stat. 577), and 1866 (14 Stat. 357). The national quarantine act of 1878 (20 Stat. 37) expressly stipulated that rules and regulations made for the enforcement of the law by the Marine Hospital Service must not "conflict with or impair any sanitary or quarantine laws or regulations of any state or municipal authorities."

In the act of Congress of July 1, 1902 (32 Stat. 712), enlarging the scope of the Marine Hospital Service and changing its name to Public Health and Marine Hospital Service, the Surgeon General of the Service was required to call an annual conference of the health authorities of the States, Territories, and the District of Columbia, and special conferences whenever "the interests of the public health would be promoted." He was also required to call a special conference at the request of not less than five state or territorial boards of health, quarantine authorities, or state health officers. Such annual conferences of state health officers have been held regularly since that time.

#### *Powers of State Health Departments*

The legal powers and duties of state health departments are only those which have been expressly conferred by, or may be reasonably implied from, the acts of the legislature. These powers vary greatly in the different States. It is, of course, the function and duty of a

9. *State v. Matassarini* (1923), 114 Kan. 244, 217 P. 930. *State ex rel. Saint v. Dowling* (1928), 167 La. 907, 120 So. 593.

10. *Hard v. State ex rel. Baker* (1934), 228 Ala. 517, 154 So. 77. See Chapter VI, on Health Officers and Employees.

state legislature as part of the police power to make all laws that are necessary for the protection of the public health, but legislatures have had widely variant ideas as to how to exercise this power. In some States, the legislature has conferred upon the state health department almost plenary powers, while in others most of the public health authority has been delegated to municipal and other local health departments and the state health department has been relegated largely to the position of advisor. Since diseases operate without regard to fixed boundaries and often involve all or large parts of a State, considerable authority over the administrative control of disease must be given to every state health department.

The powers of a state health department do not extend beyond the boundaries of the State, although necessary and appropriate reciprocal agreements in public health matters may be made with other States.<sup>11</sup>

The legal powers of state health departments may, in general, be grouped under these five headings:

1. Quasi-legislative or code-making power
2. Quasi-judicial powers
3. Executive and administrative duties
4. Investigative functions
5. Educational functions

### *The Code-Making Power*

While it is a truism that under our form of government only the legislature may make the laws, and that this power cannot be delegated,<sup>12</sup> the legislature may empower administrative agencies such as health departments to make reasonable rules and regulations to carry out the intent and purposes of legislation.<sup>13</sup> When properly adopted

11. *La Forge v. State Board of Health* (1941), 237 Wis. 597, 296 N.W. 93.

12. *State v. Burdge* (1897), 95 Wis. 390, 70 N.W. 347, 60 A.S.R. 123, 37 L.R.A. 157.

13. *California Reduction Co. v. Sanitary Reduction Works* (1905), 199 U.S. 306, 26 S. Ct. 100, 50 L. Ed. 204. *Hurst v. Warner* (1894), 102 Mich. 238, 60 N.W. 440, 47 A.S.R. 525, 26 L.R.A. 484. *State v. Beacham* (1899), 125 N.C. 652, 34 S.E. 447. *Blue v. Beach* (1900), 155 Ind. 121, 56 N.E. 89, 80 A.S.R. 195, 50 L.R.A. 64. *Isenhour v. State* (1901), 157 Ind. 619, 62 N.E. 40, 87 A.S.R. 228. *Lee v. Marsh* (1911), 230 Pa. 351, 79 A. 564. *State v. Morse* (1911), 84 Vt. 387, 80 A. 189, 34 L.R.A. (N.S.) 190, Ann. Cas. 1913 B 218. *State v. Snyder* (1912), 131 La. 145, 59 So. 44. *Hawkins v. Hoyer* (1914), 108 Miss. 282, 66 So. 741. *Horn v. State* (1920), 17 Ala. App. 419, 84 So. 883. *Miller v. Johnson* (1921), 110 Kan. 135, 202 P. 619. *Lawrence v. Briry* (1921), 239 Mass. 424, 132 N.E. 174. *Shilkett v. State* (Okla. 1925), 232 P. 127. *State v. Wood* (1927), 51 S.D. 485, 215 N.W. 487, 54 A.L.R. 719. *State v. City of Van Wert* (1933), 126 Oh. St. 78, 184 N.E. 12.

as authorized by law, such rules and regulations will have the force and effect of law, and must be obeyed by all persons affected by them.<sup>14</sup> Only the legislature, and not the state health department, can prescribe a penalty for the violation of such rules and regulations.<sup>15</sup>

This quasi-legislative, or code-making, power has been conferred by law upon many of the state boards of health and public health councils. It can be exercised only when it is conferred by the statutes<sup>16</sup> or may be properly implied from them. Sometimes broad phraseology in a public health law, such as a statement that the state board of health may adopt all necessary measures for the prevention of disease, has been construed as giving quasi-legislative powers. Occasionally the law simply authorizes the board of health to make necessary regulations for "the preservation of the public health," but the statutes may enumerate in some detail the subjects that may be regulated, such as the control of communicable diseases, the suppression of nuisances, the supervision of milk and food supplies, the control of water supplies and sewage, and the licensing of trades and occupations.

A law giving a state board of health authority to promulgate rules and regulations does not authorize it to delegate this power to still another board.<sup>17</sup> The rules and regulations of administrative boards must always be reasonable and carefully drafted,<sup>18</sup> since they will be more rigidly construed by the courts than legislation. While subject to review by the courts, they will not be reviewed unless they are arbitrary and capricious,<sup>19</sup> and they will not be held to be invalid unless such regulations are clearly unconstitutional and/or beyond the scope of the authority of the board.<sup>20</sup>

14. *Polinsky v. People* (1878), 73 N. Y. 65. *Cartwright v. Board of Health of Cohoes* (1901), 165 N.Y. 631, 59 N.E. 1120. *Belmont v. New England Brick Co.* (1906), 190 Mass. 442, 77 N.E. 504. *State Board of Health v. Suslin* (1913), 132 La. 569, 61 So. 661.

15. *Pierce v. Doolittle* (1906), 130 Ia. 333, 106 N.W. 751, 6 L.R.A. (N.S.) 143. *State v. Snyder* (1912), 131 La. 145, 59 So. 44. *State v. Normand* (1913), 76 N.H. 541, 85 A. 899, Ann. Cas. 1913 E 996. *People v. Blanchard* (1942), 288 N.Y. 145, 42 N.E. (2d) 7.

16. *State v. Goss* (1932), 79 Utah 559, 11 P. (2d) 340.

17. *Commonwealth v. Staples* (1906), 191 Mass. 384, 77 N.E. 712.

18. See Chapter XX, on Health Legislation.

19. *Community Chautauquas v. Caverly* (1917), 244 F. 893. *Ambruster v. Mellon* (1930), 41 F. (2d) 430, 59 App. D.C. 341.

20. *American Bakeries Co. v. Louisiana* (1937), 186 La. 433, 172 So. 518. *Wheeler v. River Falls Power Co.* (1927), 215 Ala. 655, 11 So. 907. See *Borough of Florham Park v. Department of Health* (1929), 7 N.J. Misc. 549. 146 A. 354, holding that a rule of the state department of health cannot alter the common law.

When rules and regulations are adopted by state health departments, they must be made known to the people, and particularly to those who are most directly affected. Such regulations should be published in official state journals, in bulletins or magazines issued regularly by the health department, and in the newspapers, and they should also be issued in pamphlet form for general distribution. The people are entitled to be apprised definitely and precisely of what is expected of them. The old adage that ignorance of the law is no excuse may still have some general legal significance, but in this day of multiplicity of rules and regulations by administrative as well as by legislative agencies, this adage is at least obsolescent.

### *Quasi-Judicial Powers*

While executive boards and ministerial officers cannot usurp the functions of the courts, they may be given certain quasi-judicial powers. Thus, state boards of health or public health councils often have the power to hold hearings, summoning before them persons who are charged with violations of state health laws and sanitary codes, or who have applied for licenses or permits, or have other business upon which the board may take action under the law. Witnesses may also be summoned to testify at these hearings, which are usually preliminary to action of some kind.

Decisions of state boards of health, arrived at in good faith after suitable notice and a fair hearing, will usually be upheld by the courts.<sup>21</sup> An individual or corporation who feels that his rights have been denied or infringed by the decision or order of a state board of health may always appeal to the courts, unless the state constitution has made the decision of the board final, as it has in one State.<sup>22</sup>

The exact scope of this quasi-judicial power of state boards of health in each State can be ascertained only from the statutes that apply. That the power must be exercised with caution, however, is indicated by a decision of the United States Supreme Court in 1938,<sup>23</sup>

21. *People v. Wilson* (1911), 249 Ill. 195, 94 N.E. 141. *State v. Quattropani* (1926), 99 Vt. 360, 133 A. 352. *Deborah Jewish Consumptive Relief Soc. v. State Board of Health* (1929), 7 N.J. Misc. 779, 147 A. 226. *State v. City of Van Wert* (1933), 126 Oh. St. 78, 184 N.E. 12. *Mintz v. Baldwin* (1933), 289 U.S. 346, 53 S. Ct. 611, 77 L. Ed. 1245.

22. *State v. King County Superior Court* (1918), 103 Wash. 409, 174 P. 973.

23. *Morgan v. U.S.* (1936), 298 U.S. 468, 56 S. Ct. 906, 80 L. Ed. 1288. *Morgan v. U.S.* (1938), 304 U.S. 1, 58 S. Ct. 773, 82 L. Ed. 1129. See J. P. Chamberlain, N. T. Dowling, and P. R. Hays, *The Judicial Function in Federal Administrative Agencies*, New York. Commonwealth Fund, 1942.



holding invalid an order of the Secretary of Agriculture because of failure to accord a fair hearing to those who were affected by the order. In delivering the opinion of the court in this case, Chief Justice Hughes stated that:

The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.

These sagacious words are worth framing in the office of every health department.

### *Administrative Duties*

In their beginnings, state health departments were undoubtedly intended to be mainly advisory bodies, except in those seaboard States where maritime quarantine was an important and often urgent function. The complete responsibility for maritime quarantine was, however, assumed by the Federal Government in 1878.

Since that time, many administrative duties have been handed over to or assumed by the various state health departments. Included among the legal duties are 1) the collection and recording of vital statistics for the State; 2) the prevention and control of the intrastate spread of communicable diseases; 3) the maintenance of public health laboratories; 4) the safeguarding of water and milk supplies and the control of environmental sanitation by means of public health engineering services; 5) the supervision of food supplies and nutrition; 6) the promotion of maternity, infant, child, and school hygiene; 7) public health nursing; 8) industrial hygiene; 9) the licensing of occupations; 10) popular health instruction; 11) the supervision of local health administration; 12) medical and dental services; 13) miscellaneous duties.

Not all these functions are undertaken by all state health departments, although all or practically all these departments are concerned with vital statistics, communicable disease control, sanitary engineering, child hygiene, and public health education. In some States, food and drug control, milk control, school hygiene, industrial hygiene, and the licensing of professional persons are under the jurisdiction of state departments, bureaus, or commissions other than the health depart-

ment. There is, in fact, a wide dispersion of public health functions among multiple agencies in the structure of state governments. Recent surveys have shown that no less than forty-eight separate agencies participate in health work in the different States.<sup>24</sup>

Proper state health functions have been set forth in an official declaration of the American Public Health Association.<sup>25</sup> Since this association is the established professional society of sanitarians and public health workers in North America, its declarations as duly adopted represent the consensus of scientific opinion on such matters. The statement, adopted in 1940, is as follows:

State health functions include at least the following:

1. Study of state health problems and planning for their solution as may be necessary.
2. Coordination and technical supervision of local health activities.
3. Financial aid to local health departments as required.
4. Enactment of regulations dealing with sanitation, disease control, and public health, which have the force of law throughout the state.
5. Establishment and enforcement of minimum standards of performance of work of health departments, particularly in communities receiving state aid for public health.
6. Maintenance of a central laboratory, and where necessary branch laboratories, for the standard functions of diagnostic, sanitary, and chemical examinations; production or procurement of therapeutic and prophylactic preparations, and their free distribution for public health purposes; establishment of standards for the conduct of diagnostic laboratories throughout the state; laboratory research into the causes and means of control of preventable diseases.
7. Collection, tabulation, and publication of vital statistics for each important political or health administrative unit of the state and for the state as a whole.
8. Collection and distribution of information concerning preventable diseases throughout the state.
9. Maintenance of safe quality of water supplies and controlling the character of the disposal of human waste for all communities of the state.
10. Establishment and enforcement of minimum sanitary standards for milk supplies.
11. Provision for services to aid industry in the study and control of health hazards due to occupation.
12. Prescription of qualifications for certain public health personnel.

24. *Distribution of Health Services in the Structure of State Government*, Public Health Bulletin No. 184, 3d ed., U.S. Public Health Service, 1943.

25. *Desirable Minimum Functions and Organization Principles for Health Activities*, American Public Health Association Year Book, 1940-1941, New York.

13. Formulation of plans in cooperation with other appropriate agencies for the prompt mobilization of services to meet the health needs.

The Association further recommends that local authorities should assume the primary responsibility for carrying out this program, because the major part of direct service to people can be most efficiently and economically rendered on a community basis. While public health is a primary responsibility of each local community, it is nevertheless indispensable that authority should be vested in the state health department to make certain for the state as a whole that the health in communities where local control is effective will not be jeopardized by the inertia, incompetence, or neglect of the local government of other communities.

In the Report of the Special Commission to Study and Investigate Public Health Laws and Policies, submitted to the Massachusetts Legislature in 1936, the functions of a state health department were declared to be: 1) an advisory body; 2) a correlating agency with power over intercommunity problems; 3) an agency offering certain specialized direct services; 4) an agency for the establishment of minimal standards for public health work; 5) the dissemination of information; and 6) research.

*Vital Statistics.*<sup>26</sup> In all States there are laws pertaining to vital statistics. In every State except one (Massachusetts), the state health department receives, tabulates, and records reports of all births, deaths, and stillbirths (and sometimes marriages), which are forwarded at regular intervals on standard forms by local registrars of vital statistics, who are sometimes appointed by the state health department, sometimes elected, and sometimes are ex officio, such as local health officers or municipal clerks. In Massachusetts the office of the Secretary of State has charge of vital statistics.

*Control of Communicable Diseases.*<sup>27</sup> Although the prevention and control of infectious and contagious diseases is in the first instance usually the responsibility of local health authorities, the state health department has certain important duties. It receives and studies reports of communicable diseases transmitted regularly by local health officers or sent directly by physicians. In cases of epidemics or emergencies, the state health department may assist local health officials or take charge of the situation. The state health department also conducts epidemiological studies in order to ascertain the cause and reason for the spread of diseases and epidemics. In a few States, the state health department itself has supervision of local quarantine. Special

26. See Chapter VII, on Vital Statistics.

27. See Chapter VIII, on Communicable Diseases.

activities against tuberculosis,<sup>28</sup> venereal diseases,<sup>29</sup> and diseases of unique local significance such as hookworm or pellagra, are undertaken by most state health departments.

*Laboratories.* Public health diagnostic and research laboratories have been maintained by state health departments for more than fifty years. A smallpox vaccine laboratory was established by the Minnesota State Board of Health in 1890, and a state diagnostic laboratory was set up in Rhode Island in 1894. Today every state health department maintains, or has access to, one or more laboratories for public health work. These laboratories provide diagnostic facilities for communicable diseases, and also for the examination of water, sewage, milk, foods, drugs, and sometimes pathological specimens. In some instances, biological products, such as vaccines, serums, and anti-toxins, are manufactured and distributed. Branch laboratories are occasionally located at strategic places in the State, and traveling laboratories are sometimes maintained.<sup>30</sup>

*Public Health Engineering.*<sup>31</sup> Bureaus or divisions of sanitary or public health engineering have been set up in most of the state health departments for the purpose of protecting water and ice supplies; supervising sewage and waste disposal, and for rodent and insect control; inspecting camp grounds, swimming pools, and similar establishments; and safeguarding milk supplies, although this last duty may be vested in some other division of the state health department or of the state government. Shellfish sanitation is usually conducted by public health engineers of the seaboard States.

*Food Supplies.*<sup>32</sup> In about half the States, the control of foods and drugs is a duty of the state health department, while in the remainder it is the duty of the state department of agriculture or some other bureau of the state government. Activities include medical examinations of food handlers, inspections of food establishments, examinations for adulteration, prevention of contamination of foods, enforcement of tuberculin-testing and Bang's disease testing of cattle and milk pasteurization laws, and laboratory analyses.

28. See Chapter IX, on Tuberculosis.

29. See Chapter X, on Venereal Diseases.

30. In a recent case in Florida it was held that licensed naturopaths are entitled to use the facilities of the laboratories of the state board of health. *Turner v. Baltzell* (1940), 144 Fla. 278, 197 So. 783.

31. See Chapter XIII, on Nuisances and Sanitation. G. C. Whipple, *State Sanitation*, Reprint No. 710, U.S. Public Health Service, 1921.

32. See Chapter XII, on Foods, Drugs, and Cosmetics.

*Nutrition.* The advent of World War II directed attention to the nutritional status of the people of the United States. As the result of national studies indicating widespread defects in the American dietary and the need for their correction, state and local nutrition committees were organized in every state, in every instance with health department representation. In accordance with recommendations of the Food and Nutrition Board of the National Research Council and other agencies, bread and flour were enriched with certain vitamins and minerals in compliance with standards promulgated by the Federal Food and Drug Administration in 1941 and 1943. By Food Distribution Order No. 1 of the Federal Food Distribution Administration, effective January 18, 1943, all bread and rolls in the United States were required to be enriched. Early in 1942 a state law requiring the enrichment of bread and flour was adopted in South Carolina, and later that year such a law was passed in Louisiana. Since that time (to 1946) similar legislation has been adopted in nineteen States, in most instances following a uniform bill recommended by the Council of State Governments. These laws are enforced, in general, by the Commissioners of Agriculture in the States.<sup>33</sup>

*Maternal and Child Hygiene.*<sup>34</sup> The first bureau of child health in a state health department was established in New York State in 1914. By 1919 there were similar bureaus in fifteen States. Efforts in behalf of maternal, infant, and child hygiene by state health departments received their greatest stimulus from the act of Congress of 1921 known as the Federal Act for the Promotion of Maternity and Infancy (42 Stat. 135) or "Sheppard-Towner Law," under the terms of which financial grants for this purpose were made to States which matched the federal funds allotted to them. This law was in force for the period from 1922 to 1929. By 1927 all States but one had organized bureaus or divisions of child hygiene in their state health departments. The Federal Social Security Act of 1935 provides for payments to the States for maternal and child health services.

Among state-wide activities carried on by these bureaus are maternity and prenatal work, including the regulation, licensing, and

33. R. M. Wilder and R. R. Williams, *Enrichment of Flour and Bread*, Bulletin No. 110, Washington, National Research Council, 1944. *The Facts About Enrichment of Flour and Bread*, National Research Council, October 1944 and February 1945. See also Chapter XII, on Foods, Drugs, and Cosmetics.

34. See T. Clark and S. D. Collins, *A Synopsis of the Child Hygiene Laws of the Several States, Including School Medical Inspection Laws*, Public Health Bulletin No. 110, U.S. Public Health Service, 1925.

supervision of midwives,<sup>35</sup> preschool hygiene, and school hygiene, although in some States the administration of school hygiene rests with the state department of education or public instruction. The maternal and child hygiene activities also include regulation of lying-in hospitals, orphanages, and other institutions, and the enforcement of laws for the prevention of ophthalmia neonatorum or acute infectious conjunctivitis of infants.

*Public Health Nursing.*<sup>36</sup> Public health nursing is often undertaken in the state health department in connection with maternal and child hygiene activities, although in a number of States there are separate bureaus of public health nursing in the health department. Public health nurses, who are registered nurses having special training in public health work, are employed by state health departments to conduct child health conferences; to organize and conduct classes for mothers, midwives, and teachers; to assist in or supervise school nursing and health education; to aid in establishing and conducting preventive clinics; and otherwise to act as "couriers of the gospel of good health."

*Industrial Hygiene.*<sup>37</sup> Prior to 1936 only five state health departments were concerned with industrial hygiene, or the protection of the health of the worker. Since that time, however, divisions of industrial hygiene or occupational diseases have been created in most state health departments. Activities of this nature are likewise often conducted by other departments of the State, such as the departments of labor or industry, the workmen's compensation commission, the industrial accident board, etc. The duties of such bureaus include investigations of occupational diseases, the abatement by persuasion or by law enforcement of industrial health hazards, and the promotion of industrial hygiene generally. For this purpose, physicians, engineers, and chemists are needed.

*Licensing.* In only a few of the States are the state health departments charged with the licensing of professional or sub-professional

35. *Barresi v. State Commissioner of Health* (1922), 196 N.Y.S. 376, 203 App. Div. 2.

36. J. A. Tobey, State laws on public health nursing, *Pub. Health Nurse*, 22:228, May 1930; a survey made in 1939 showed few changes. M. S. Gardner, *Public Health Nursing*, 3d ed. rev., New York, Macmillan, 1936.

37. See Chapter XVI, on Industrial Hygiene. R. R. Sayers and J. J. Bloomfield, Industrial hygiene activities in the United States, *Am. J. Pub. Health*, 26:1087, November 1936. J. J. Bloomfield and M. F. Peyton, *Evaluation of the Industrial Hygiene Problems of a State*, Public Health Bulletin No. 236, U.S. Public Health Service, 1937.

workers, such as physicians, nurses, midwives, undertakers, etc. This duty is, as a rule, delegated by the State to a special board or commission, or to the state board of regents. There is no logical reason why a state health department should be concerned with the examination and licensing of physicians and nurses, although it may properly issue licenses and permits to and set standards for persons engaged in occupations which may affect the public health, such as laboratory technicians, water works and sewage works operators, dairymen, proprietors of private hospitals and other institutions, camp directors, etc.

*Public Health Education.* The proper instruction of the people in the correct principles of public and personal hygiene is an important obligation of health officials. Such activities may appropriately be undertaken by state health departments and are, in fact, authorized by the statutes in many States. In the absence of specific legislation, this power may be implied from general legislation on public health subjects. In many of the state health departments there are divisions of public health education, which issue bulletins and pamphlets, provide appropriate newspaper publicity, arrange for exhibits, addresses, and radio programs, and distribute motion pictures.

*Cancer.* Activities for the control of cancer are undertaken in most of the States, although specific laws on the subject exist in only about a dozen jurisdictions. As early as 1898 New York enacted a statute for activities against cancer and Massachusetts adopted such a law in 1926. The disease or group of diseases known as cancer are reportable by law or regulation in sixteen States. In addition to study of the incidence of this morbid condition and other research, activities for cancer control include information for physicians and the laity, and stimulation of diagnostic and treatment facilities. A few States maintain divisions or bureaus of cancer control in state health departments, while several have separate state cancer control commissions.<sup>38</sup>

*Miscellaneous Duties.* Among the miscellaneous functions performed by some of the state health departments, usually under the sanction of law, are adult hygiene; mental hygiene, or attempts to improve and alleviate mental disorders and promote mental health; dental hygiene; hospitalization for the tuberculous;<sup>39</sup> housing; preven-

38. J. A. Tobey, *Cancer: What Everyone Should Know About It*, New York, Knopf, 1932. L. A. Scheele, Present status of state cancer control programs, *Pub. Health Rep.* 57:1613-1620, October 23, 1942.

39. See Chapter IX, on Tuberculosis.

tion of blindness and care of the blind; orthopedics and care of crippled children; scientific research which tends to improve the public health; and inspection of state institutions.

*Gifts.* State health departments are often given the power by law to accept, take, and administer any gift, grant, or bequest, the principal or interest of which may be applied to proper public health purposes, subject to any provisions of the general finance laws, or other laws, of the State.

### *Supervision of Local Health Administration*

The amount of control that can be exercised by state health departments over local health officials and local health conditions is governed by the statutes in each State. In some commonwealths this control is extensive, local health officers being appointed by the state health department, or such appointments being subject to the approval of the state health authorities. In other States the state health department has some control over county health officers, but very little legal jurisdiction over municipal health officials, although the department usually can intervene in local affairs in times of emergency, epidemics, or when the health of the people of a considerable part of the State is in jeopardy. In some of the larger cities, such as New York and Baltimore, municipal charters granted by the State have given complete or virtually complete control over the public health of the city to the local health authorities, and the State has practically no jurisdiction over health matters in these municipalities.

Whatever may be the terms of the law, it seems agreed among experts on public health that the state health department should assume leadership in the public health affairs of the State. This department should offer guidance to local authorities at all times, and exert actual control when conditions warrant such action.

### *Health Districts*

In a number of States provision has been made for health districts consisting of groups of counties or other areas. In charge of each district is a district or deputy state health officer, who is appointed by and reports directly to the state health department. He may be assisted in his work by one or more public health nurses, a public health engineer, and other employees. The principal duties of these district health officers are to aid in communicable disease control and environmental sanitation, to make investigations, and to supervise or



guide local health administration, this activity depending upon the scope and extent of the legislative authority.<sup>40</sup>

The State may also provide for so-called sanitary districts, organized chiefly for the purpose of caring for sewage disposal from designated areas, such, for example, as the Chicago Sanitary District.

The creation of such health and sanitary districts by the State has been upheld by the courts as a valid and proper exercise of the police power.<sup>41</sup> In upholding a law providing for general health districts consisting of groups of townships and villages, and municipal health districts consisting of separate cities, the Ohio Supreme Court pointed out that:

The legislature obviously felt that certain sections of the State are so populated as to make it advisable that there should be a series of city health districts, as distinguished from the general health districts for which it provided in other sections, and that the administrative machinery for the purpose of carrying out the law and accomplishing the purposes of the legislation should be somewhat different in the different districts.<sup>42</sup>

40. The duties of district health officers in New York State under the direction of the state commissioner of health are enumerated in the Public Health Law, Sec. 4a, as follows: 1) keep himself informed as to the work of each local health officer within his sanitary district; 2) aid each local health officer within his sanitary district in the performance of his duties, and particularly on the appearance of any contagious disease; 3) assist each local health officer within his sanitary district in making an annual sanitary survey of the territory within his jurisdiction, and in maintaining therein a continuous sanitary supervision; 4) call together the local health officers within his district or any portion of it from time to time for conference; 5) adjust questions of jurisdiction arising between local health officers within his district; 6) study the causes of excessive mortality from any disease in any portion of his district; 7) promote efficient registration of births and deaths; 8) inspect from time to time all labor camps within his district and enforce the regulations of the public health council in relation thereto; 9) inspect from time to time all Indian reservations and enforce all provisions of sanitary code relating thereto; 10) endeavor to enlist the cooperation of all the organizations of physicians within his district in the improvement of the public health therein; 11) promote the information of the general public in all matters pertaining to the public health; 12) act as the representative of the state commissioner of health, and under his direction, in securing the enforcement within his district of the provisions of the public health law and the sanitary code.

41. *People v. Nelson* (1890), 133 Ill. 246, 27 N.E. 217. *Wilson v. Chicago Sanitary District* (1890), 133 Ill. 443, 27 N.E. 203. *Woodvale v. Fruitvale Sanitary District* (1893), 99 Cal. 554, 34 P. 239. *In re Werner* (1900), 129 Cal. 567, 62 P. 97. *Judge v. Berman* (1913), 258 Ill. 246, 101 N.E. 574. *Drysdale v. Prudden* (1928), 195 N.C. 722, 143 S.E. 530. *City of Fort Smith v. Roberts* (1928), 177 Ark. 821, 9 S.W. (2d) 75. *People v. Bergin* (1930), 340 Ill. 20, 172 N.E. 60. *Wilkins v. Moore* (Oh. 1938); 24 F. Supp. 670.

42. *State v. Zangerle* (1921), 103 Oh. St. 566, 134 N.E. 686.

Health and sanitary districts are organized to promote the public health, but all their powers are subject to legislative authority and cannot, as a rule, go beyond those actually delegated by law to the district.<sup>43</sup> The formation of a health or sanitary district along the same lines as an existing county does not superimpose upon the county a public corporation exercising identical powers, for it is within the police power of the State to create such districts and give to them even greater authority over public health matters than is possessed by the county, which may have no jurisdiction over public health in incorporated cities and towns within the county.<sup>44</sup>

Where a statute relating to the creation of sanitary districts provided that 51 per cent or more of the resident freeholders within a proposed district could petition the board of county commissioners, and such board was required to hold a hearing and then transmit the petition to the state board of health, and where such a petition was filed and notice of hearing by the board had been given, but before any action was taken a considerable number of signers of the petition signified their desire to withdraw their names, it was held that they were within their rights and that the petition as finally presented for action did not contain the signatures of 51 per cent of the resident freeholders of the proposed district.<sup>45</sup>

#### *Selection of Public Health Personnel*

A merit system for public health personnel in the States was established in 1940. Authorization for such a system was given in the amendments to the Social Security Act of 1935, which were adopted by Congress in 1939 (53 Stat. 1360, 42 U.S.C. 302). By the terms of this act the Children's Bureau was empowered to require the States to provide for the establishment and maintenance of personnel standards on a merit basis in connection with public health activities supported by federal funds. A similar regulation was promulgated by the Surgeon General of the Public Health Service, applicable to the public health services which received grants-in-aid administered by the Surgeon General.

In the States the merit system may utilize existing civil service, as

43. *Stumpf v. San Luis Obispo County* (1901), 131 Cal. 364, 63 P. 663, 82 A.S.R. 350. *Guptil v. Kelsey* (1907), 6 Cal. App. 35, 91 P. 409.

44. *Stuckenbruck v. San Joaquin County* (1924), 198 Cal. 506, 225 P. 857.

45. *Idol v. Hanes* (1941), 219 N.C. 723, 14 S.E. (2d) 801. In *Coblentz v. Sparks* (1940), 35 F. Supp. 605, a county board was held guilty of an abuse of discretion in establishing a sewer district in a sparsely populated area.

created by statute, or may provide by agreement and regulation for a joint merit system of two or more state agencies, and in certain instances for a single system in the health department. It is administered by a merit system supervisor, with the aid of an advisory council.

The system provides that professional personnel of the state health department and of such local health departments as are recipients of federal funds shall be selected on the basis of a competitive examination, or an unassembled examination. The system also provides for promotion and increases in compensation based on ability and length of service, and elimination of partisan politics in the selection, promotion, and activities of the personnel. The state health officer and members of the board of health and certain other advisory boards, and certain other persons, are exempt from the provisions of the system.

At the request of the Children's Bureau and the Public Health Service, the examination material used in the States for this purpose has been developed by the American Public Health Association, which has organized a Merit System Unit. Since 1941 such examinations have been offered on a voluntary basis to the States in such fields as administrative public health, public health nursing, laboratory work, and environmental sanitation.<sup>46</sup>

46. R. M. Atwater and L. D. Long, New methods for the selection of public health personnel, *Canad. J. Pub. Health*, 36:1-5, January 1945.