PART IV

LEGISLATION AND LAW ENFORCEMENT

CHAPTER XX

THE PREPARATION AND ADOPTION OF HEALTH LEGISLATION

ONE of the requisites for successful public health effort is the existence of valid, adequate, practical, and enforceable public health legislation. In order that such legislation may be truly adequate and practical, as well as scientific and reasonable, it must always be prepared by an expert, or experts, familiar not only with public health policies but with the technique of bill drafting. The preparation of sound laws on any topic is, in fact, an intricate, elaborate, intellectual, and forensic task, which seldom can be accomplished satisfactorily by anyone not an expert.

Statutes and ordinances that are regulative and impose more or less drastic restraints upon persons and property require especial care in their preparation. Since most public health legislation is in this category, it is apparent that if such laws are to stand the test of court analysis and are to advance the cause of public health, they must be written by informed persons and not by amateurs or dilettantes, as seems unfortunately to have been the case too often in the past.

"It will be of little avail to the people," wrote Alexander Hamilton in *The Federalist* in 1788, "that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today can guess what it will be tomorrow."

The Function of the Legislature

The legislature is the sole lawmaking branch of our tripartite system of government. Its function is to ascertain, by means of thorough investigation and discussion, what laws are needed and then to promulgate them. When a law has been passed, it is the duty of the executive branch of government to enforce it, and of the judiciary to see that justice is applied under it, a duty which may involve the interpretation of the statute and a decision as to its constitutionality.

The legislature may decide as a matter of fact that vaccination is a preventive of smallpox and conclude that the interests of the public health demand that children in the State shall be required to be vaccinated before being admitted to schools, and accordingly pass a law

to this effect. If such legislation infringes no constitutional rights of citizens, it will be upheld by the courts, who will not question the fact as that is for the legislature to determine.[1]

While the power to legislate can be exercised only by the legislature and cannot be delegated to the executive or judicial branches of the government, the legislature may properly authorize a suitable administrative board or agency to make rules and regulations to carry out the purposes of a law in which general policies and broad principles of legislation have been set forth. An example is where the legislature enacts a law for the control of communicable diseases in the State, setting forth general requirements for the reporting of communicable diseases by physicians and others, requirements for investigations and quarantine by health officials, and other necessary measures, and then delegates to the state board of health the power to make rules and regulations or to adopt a sanitary code, designating the diseases to be reported and the manner of reporting, the nature and extent of quarantine for particular diseases, and all other necessary procedures. Such regulations, when reasonable and properly adopted,[2] will have the force and effect of law. The courts will interfere with this power only when there has been a palpable abuse of the discretion conferred,[3] as where a regulation is clearly unreasonable[4] or is unquestionably beyond the power of the board to adopt.[5]

Under the authority of the police power state legislatures have adopted numerous public health laws, although with very little regard for uniformity. Despite this abundance of public health legislation, new laws on health matters are constantly needed, either to cope with novel situations or to replace legislation that is outmoded, insufficient, improper, or inadequate.[6]

Most of the state legislatures meet biennially, although a dozen or so meet annually. One, that in Alabama, meets only once in four years.

1. *Viemeister* v. *White* (1904), 179 N.Y. 235, 72 N.E. 97, 103 A.S.R. 859, 1 Ann. Cas. 334, 70 L.R.A. 796. *Jacobson* v. *Massachusetts* (1905), 197 U.S. 11, 49 L. Ed. 643, 25 S. Ct. 358, 3 Ann. Cas. 765.

2. *Wheeler* v. *River Falls Power Co.* (1927), 215 Ala. 655, 111 So. 907, holding that a quorum of a board must be present when regulations are adopted.

3. *Naccari* v. *Rappelet* (1907), 119 La. 272, 44 So. 13, 13 L.R.A. (N.S.) 640. *State* v. *Withnell* (1912), 91 Neb. 101, 135 N.W. 376, 40 L.R.A. (N.S.) 898.

4. *State* v. *Holcombe* (1886), 68 Ia. 107, 26 N.W. 33, 56 Am. R. 853.

5. *State* v. *Goss* (1932), 79 Utah 559, 11 P. (2d) 340. See Chapter IV, pages 63-65, *infra.*

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

In many States the duration of the session is fixed by law, as for sixty or ninety days or some other period, but in eighteen States there is no limit. About forty legislatures assemble in the odd-numbered years, while about a dozen meet during the even-numbered years. Special meetings may generally be called when necessity arises. When the forty or more legislatures have been in session, some seventy-five thousand bills on all subjects will have been introduced in all these States, according to the experience of recent years. Of this number perhaps fifteen hundred, more or less, will be concerned with the public health. Not all of the vast number of bills submitted become laws, of course, but many new ones are added annually to the statute books.

In commenting upon the expansion of statutes in this country, Justice Harlan F. Stone stated in 1925 when he was Attorney General, "We make a prodigious number of laws. In enacting them we disregard the principles of draftsmanship and leave in uncertainty their true meaning and effect. . . . We disregard the principle that there is a point beyond which restraints of positive law cannot be carried without placing too great a strain on the machinery and the agencies of law enforcement."[7]

Ascertaining the Need for Health Laws

When new or better health legislation is contemplated, obviously the first step to take is to ascertain what is the existing statute law on the subject. Too often enthusiastic persons decide that a measure should be presented, whereas the subject is already adequately covered or may be completely taken care of by implied powers in general legislation. If the former is the case, the law may easily be found; while in the latter, recourse may perhaps be had to court decisions to clarify the point. A legislature may, of course, alter by legislation a principle laid down by a court, provided, of course, that no constitutional question is involved. Thus, for instance, a court may decide that existing health laws do not authorize exclusion by local health departments of unvaccinated children from schools in the absence of an emergency, whereupon the legislature may pass a law providing for just such exclusion.

The best place to find the written law is in the official codes, compiled statutes, or general statutes of the State. Since these are compiled as of a certain date, it is further necessary to consult the official printed volume of session laws or the supplements which have been

7. Quoted in the *New York Times*, January 11, 1925.

issued since the code or compiled statutes was published. All these volumes are on file at the State Capitol and are usually in the larger public libraries and law libraries throughout the State. They are often in the possession of health officials, who should be certain, however, that they have a complete set, giving all laws and amendments to date. The attorney general of the State will usually give information to local officials regarding laws. Many state health departments have issued pamphlet compilations of the health laws of the State. While some of these are excellent, being accurate and reissued frequently, many of them are not kept up to date and often are incomplete or contain serious mistakes. These pamphlets are valuable for reference but should not be taken as final authority, and use should be made of the official volumes of compiled statutes.

The next step is to decide whether to 1) repeal existing law, 2) amend existing law, or 3) write a new law. As a general proposition, the amendment is the best procedure if it is possible to use it. This prevents the confusion attendant upon the enactment of independent statutes on subjects already covered by general legislation and simplifies codes, but all amendments must be properly coordinated with all laws which they affect.

Technical Assistance Necessary

Since the drafting of good legislation is a highly technical task, expert assistance is generally necessary. As John Stuart Mill wrote, "There is hardly any kind of intellectual work which so much needs to be done, not only by experienced and exercised minds, but by minds trained to the task through long and laborious study, as the business of law-making." Today most of the States have legislative drafting services at their Capitols. Sometimes these are connected with state libraries, a useful arrangement, for often much research is desirable. Anyone can prepare a bill, of course, and usually a legislator can be induced to introduce it, but not many persons know how to write laws which are clear, legal, scientific, and generally foolproof.

The attorney general's office will usually render an opinion on a proposed bill or regulation and many local health departments make it a custom to submit all proposed ordinances to this officer for criticism and correction, either directly or through the state health department. A lawyer familiar with legislative drafting in the State may also be consulted, but not all attorneys are experts in this branch of work. Theoretically, better legislation would result if all new bills were written first by a person familiar with the technical aspects of the subject involved, then gone over by a professor of English com-

position, finally reviewed by a competent lawyer, and then rewritten by all three in conference with an expert on bill drafting. If destructive amendments could then be avoided on the part of the legislature during debate on the bill, this system would produce the best results.

Imitation of the laws in another State, apparently often indulged in, is not as a general rule a good procedure. Because a law is on the statute books of one State, it does not necessarily follow that it is either a good law or will apply to other States. If, however, a health law of one State has been tested in the courts and upheld as legal and constitutional, this fact shows that it probably is a good law, and much assistance may be gleaned from its provisions. Even then it may not always be wise to use it verbatim, although the adoption of such a law carries with it the court's interpretation of it. The use of model legislation prepared by national health agencies may be worth while.[8]

The Actual Drafting of Legislation[9]

Many state constitutions or statutes impose definite requirements regarding form, substance, and other matters relating to legislation.[10] It will, naturally, be helpful if the writer of legislation is familiar with these provisions.

The essential features of a satisfactory bill were outlined by a committee of the American Bar Association a few years ago, as follows:

8. See, for example, *Manual of Tuberculosis Legislation*, New York, National Tuberculosis Association, 1928; and, *Forms and Principles of State Social Hygiene Laws*, New York, American Social Hygiene Association, 1944.

9. E. Freund, *Legislative Regulation*, New York, Commonwealth Fund, 1932. *Notes on Bill Drafting in Illinois*, Springfield, Illinois, Legislative Reference Bureau, 1920. *Legislation in North Carolina*, Chapel Hill, Duke University Press, 1932. S. Johnson, Statute law making with suggestions to draftsmen, *Quarterly Journal of the University of North Dakota*, 5:93, January 1915. C. Ilbert, *The Mechanics of Law Making*, New York, Columbia University Press, 1914.

10. As an example may be cited Article IV, Section VII, of the Constitution of the State of New Jersey, which reads as follows: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No general law shall embrace any provision of a private, special, or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law or any part thereof, shall be applicable, except by inserting it in such act. The laws of this State shall begin in the following style: 'Be it enacted by the Senate and General Assembly of the State of New Jersey.'"

1. Conformity to constitutional requirements.
2. Adequacy of the provisions of the law to its purpose.
3. Coordination with existing law.
4. The utmost simplicity of form consistent with certainty.[11]

Every bill consists of several parts, including: preamble (sometimes), title, enacting clause, body of bill, partial invalidity clause, penalty (sometimes), date of beginning operation, and repealing clause (sometimes). Preambles are best omitted. The body of the bill if properly drawn will tell exactly what it is all about without wasting space and time with several "whereas's."

The title should, as a rule, be fitted to the bill after it has been written and should actually express the contents and subject of the bill. It should be brief and well worded, but long enough to do justice to the material contained. No bill should ever embrace more than one subject and this should be expressed in the title. Many States have constitutional or statutory provisions to this effect, but whether they do or do not, it is a good principle to follow. Examples of proper titles are: "(A Bill for) An Act to Provide for the Regulation of Milk and Milk Products." "An Act to Amend an Act Entitled 'An Act to Provide for the Reporting of Certain Communicable Diseases,' approved March 7, 1917, in force July 1, 1917."

The enacting clause must often follow a prescribed form, as "Be it enacted by the People of the State of Illinois, represented in the General Assembly," or "Be it enacted by the legislature of the State of ——." The proper form can be easily ascertained and followed. The enacting clause is not a part of the body of the bill and is a mere matter of form.

In practically all States the passage of private legislation is forbidden. The legislature cannot, for example, pass a law granting a divorce to an individual, but it may adopt legislation regulating divorces generally throughout the State. Similarly, the legislature may not, as a rule, pass local or special legislation with respect to matters already covered by general legislation, such as the creation of a health department in a particular county where the statutes provide for the establishment or mode of establishment of county boards of health or health departments throughout the State.[12]

11. *Final Report of the Special Committee on Legislative Drafting*, Chicago, American Bar Association, 1921. This whole report is of inestimable value to anyone interested in this subject.

12. *Sams* v. *Board of County Commrs.* (1940), 217 N.C. 284, 7 S.E. (2d) 540. *Hood* v. *Burson* (1942), 194 Ga. 30, 20 S.E. (2d) 755.

The Subject Matter

The body of the bill, or the actual subject matter, is the most important part. The bill must be complete either by giving everything itself or by specific reference to other existing legislation. For instance, a bill may state: "On and after January 1, 1926, all persons who sell bottled water for human consumption shall secure licenses. Such licenses shall be issued in the same manner and under the same conditions as those provided for in Chapter 61 of the Acts of 1918 (Compiled Statutes of 1919, Article VI, Number 1181)." In some States it is necessary to repeat the act referred to. No act can be revived or amended merely by reference to its title, but only by changing the wording, adding sections, or by repealing sections.

The primary consideration in drafting the body of a bill is to make it as short, direct, and precise as possible. For many years legislation, like medicine, has been surrounded by a mysticism which has tried to superimpose upon it a vocabulary of its own. It is unnecessary, however, to use anything except exceedingly plain and straightforward rhetoric. If it is desired that syphilis be made a reportable disease, it can be so declared in about a dozen words: "Syphilis shall hereafter be reported to the state health department by all physicians." Further provisions regarding methods, time, penalty, etc., can be added. It is not necessary to write it like this: "That one of the venereal diseases commonly known and designated by the name of syphilis, a dangerous contagious and infectious disease, being a menace to health in this State, shall hereafter and henceforth be reported by all physicians of the State directly to the state department of health in order that proper and adequate measures may be taken by said department for the complete suppression, prevention, and eradication of such disease." This last effusion, which is not at all overdrawn, not only actually says no more than the shorter draft but mumbles something about taking measures, without in the least indicating or implying what they might be or who shall take them. As Elihu Root once said, "There is a useless lawsuit in every useless word of a statute and every loose, sloppy phrase plays the part of the typhoid carrier," an apt simile for a discussion on health legislation.

Affirmative language in legislation is generally considered preferable to negative language. Whether a law should be mandatory or permissive depends, of course, upon the conditions which it is desired to correct or regulate. Certain acts or conditions may, furthermore, often be regulated but cannot be prohibited. Thus, in some States the

courts have held that the sale of various foods and food products, such as oleomargarine, can be regulated but not prohibited.[13]

In writing mandatory legislation, the word "shall" is generally used, while the word "may" is usually employed for permissive legislation. If the context of the law so indicates, however, the word "may" can be construed to mean "shall." Sometimes "shall" is used to denote futurity, a use (or misuse) of the word which may raise a question as to its exact meaning. All legislation should, as a rule, be written in the present rather than the future tense. It is better to say, "Whoever grows, possesses, sells, or distributes marihuana is guilty of a misdemeanor and shall be punishable . . . ," rather than the following, "Any individual, firm, partnership, association, trust, or corporation who shall grow, have in his possession, sell or offer for sale, or distribute in any manner whatsoever by himself, his agent or representative, any of the plant Cannabis, known as marihuana, its seeds or any part or products thereof, shall be deemed to be guilty of a misdemeanor and for conviction thereof shall be punished. . . ."

This sounds impressive, but the sixty words are no better law than the sixteen in the first sentence illustrated. In fact, they are not as good, because they are discursive, redundant, and involved. "Whoever," for example, covers every person enumerated in the more lengthy illustration.

Arrangement of subject matter of legislation is also important. Above all things, it should be logical and orderly, and distinguished by the well-known rhetorical rules of unity, coherence, and emphasis. For instance, suppose a bill purports to outline the duties of a local health officer. After the preliminary part, the remainder could be written something like this:

. . . His duties shall be:

1. To act as secretary of the board of health.
2. To act as registrar of vital statistics.
3. To execute and enforce all regulations and orders of the board of health.
4. To investigate immediately the cause of all cases of communicable diseases and to take all necessary steps to prevent their spread, in accordance with the regulations of the board of health.

This illustration is intended to show form rather than substance. By listing each of the health officer's duties separately in a numbered paragraph, and restricting each subject to one periodic sentence, clarity and efficiency are obtained and understanding is fostered. The whole might

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

have been mixed and jumbled in one long unwieldy sentence. Numbered sentences or phrases may, if desired, be called sections. A long, complex bill may have a table of contents and numerous titles or chapters, sections and subsections, appropriately numbered and designated. In such a measure, definitions of the more important terms used should be given at the beginning.

A so-called "model" health code for cities, prepared by a prominent state health department and a state conference of mayors, contained the provision that when no physician is in attendance in the case of a disease presumably communicable, it shall be the duty of householders and certain other enumerated persons "to report immediately the name and address of any person under his charge affected with any disease presumably communicable to the health officer." In other words, this proposed law says that the only diseases that must be reported are those "presumably communicable to the health officer." If the health officer has had smallpox, or has been vaccinated several times so that he is immune to this disease and it could not be communicated to him, smallpox would not be reportable, at least by a strict interpretation of this law as written. What is meant, of course, is that any person named shall "report immediately to the health officer the name and address of any person under his charge who is affected with a disease that is presumably communicable." Model laws are not always as model as they might be.

Faults to Avoid

Obscurity, vagueness, ambiguity, and equivocation are among the faults to be avoided in the drafting of health legislation. If a law merely stated that, "In every school room there shall be provided a sufficient amount of fresh air," it would be vague and unenforceable. Who is to provide the fresh air, the teacher, the janitor, the school nurse? What is "a sufficient amount"? What, in fact, is "fresh air"? If there had been added to this law the words, "in accordance with regulations adopted by the board of education [or health]," the law would at least be workable.

When a law mentions a scientific process, such as the pasteurization of milk, but fails to define it, the term employed will be given the meaning which is accepted by the consensus of scientific opinion. In order to interpret the law, however, a court action may be necessary, with the usual quota of conflicting testimony. All unusual technical terms should, therefore, be clearly defined.

Redundancy and repetition are common faults of legislation. It is not necessary, for example, to say "every person, partnership, firm,

agent, association, corporation," when the single word "whoever" or the word "person," properly defined, will include them all. It is not necessary to say "each and every," or "in force and effect" when all that is meant is "each" or "in force."

Provisos have always been popular in legislation, but they are usually unnecessarily complicating. To outline what may or may not be done legally and then qualify it by numerous "provided thats" is merely confusing. Here is a horrible example: "Any physician who fails to report any of the diseases mentioned shall be subject to a fine in the discretion of the court, provided that no such fine shall exceed $100; and provided further that if such disease occur in a hospital it shall be the duty of the superintendent, whether a physician or otherwise, to report such disease under penalty of the aforesaid fine." The limitation of the fine after an unlimited one had been specified is confusing; also, the second proviso should have been incorporated in the main part of the law. This law should have been written: "Any physician or superintendent of a hospital who fails to report any of the diseases mentioned shall be subject to a fine not to exceed $100." How much more simple and clear!

Common sense and preciseness are worthy attributes of all legislation. A western State is asserted to have this gem on its statute books, "when two trains approach a crossing at the same time, both shall stop and neither shall proceed until the other has passed by." In Massachusetts, according to one writer,[14] there is a municipal ordinance stating that: "Any person who owns or occupies property abutting on a public sewer shall be connected with the same under penalty for neglect so to do of a fine not to exceed one hundred dollars." Punctuation is relatively unimportant when laws are construed, but the ordinary accepted rules of grammar should, nevertheless, be employed. A misplaced or missing comma has been known to wreak havoc in a well-meant piece of legislation, and a semicolon once nearly ruined a whole State. Lucidity and rationality are also much to be coveted in legislation.

Ample and definite provisions for enforcement should be contained in legislation. Definite requirements regarding vaccination may be given in a law, but if absolutely no mention is made of any penalty for failure to follow them or of any action which can be taken, the act would obviously be a dead letter, for nothing could be done about it if it were violated. As much discretion as possible should always be given to administrative or ministerial officers to carry out the terms of any

14. A. C. York, How to draw up public health laws and regulations, *Massachusetts Commonhealth*, April-May-June 1924.

health legislation. A health official cannot, under the theory of the separation of powers, be given legislative or judicial authority, but he may be given quasi-judicial powers as, for instance, in the determination of nuisances. All laws should provide for uniformity of operation, that is, have the same effect in all places under the same circumstances and conditions.

A repealing clause stating that "all laws inconsistent with this act are hereby repealed" is fashionable, but, like a preamble, is sometimes a waste of space, since all such previous inconsistent laws are automatically repealed. It may, however, be wise to denominate some particular act which it is intended to repeal. For instance, it could be stated, "Chapter 4 of the Acts of 1913 is hereby repealed," or "Sections 1, 3, 4, 7, and 14 of Chapter 8 of an act approved March 16, 1917 (Comp. Stat., 1936 ed., secs. 401, 403, 404, 407, and 414), are hereby repealed." Sometimes it is a moot point whether new legislation repeals old or not and eventually the courts may have to decide that point.

The date when a law goes into effect should be stated in the law; for failure to do this, it may be invalid.[15]

Finally, and most important of all, the subject matter must be reasonable and within the scope of authority of the lawmaking body. The chief criterion of all valid health legislation is its reasonableness. Every state law must also be consistent with the Federal Constitution, all Congressional enactments and federal treaties, and with the state constitution. Whether a law fulfills these requirements is a matter generally to be determined by competent legal authority. An opinion on the meaning and validity of a state law may be rendered by a state attorney general. Such an opinion is binding on all administrative officials until a court of record has ruled on the constitutionality of the law and has interpreted its meaning. In a few States the highest court may be requested by the Governor or legislature to give an opinion on legislation, but usually a decision is rendered by a court only in an action brought before it, in which the validity of a law is questioned.

The United States Supreme Court has said, "Every intendment is to be made in favor of the lawfulness of the exercise of municipal power in making regulations to promote the public health and safety, and it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community."[16]

15. *State* v. *Bunner* (1943), 126 W. Va. 280, 27 S.E. (2d) 823.

16. *Sullivan* v. *Shreveport* (1919), 251 U.S. 169, 40 S. Ct. 102, 64 L. Ed. 205. See also *Schulte* v. *Fitch* (1925), 162 Mich. 184, 202 N.W. 719.

Examples of well-drafted legislation are the standard or uniform laws prepared by the National Conference of Commissioners on Uniform State Laws. The New York Public Health Law is one of the best on this subject, and the Federal Food, Drug, and Cosmetic Act of 1938 is another example of well-drafted legislation.

Construing Statutes

A brief outline of some of the considerations which influence the courts in their interpretation of statutes may be of value in helping to point the way toward valid health legislation. The principal rule of construction is that the exact intention of the legislature must be ascertained, a task which is sometimes anything but simple. The language is carefully considered and its natural import taken. Words are given their ordinary popular meaning, but technical terms are interpreted according to their meaning in the science to which they apply. The court unfortunately cannot supply deficiencies in the language or make material changes to expand the meaning. If a law is capable of two interpretations, one absurd and the other reasonable, the latter will be presumed to have been intended, even if it was not.

A statute will always be considered as a whole, so as to harmonize all its provisions. Words and phrases[17] may, therefore, be interpreted with a view to the entire context. The title and preamble may assist in interpreting the object and meaning of the act, but otherwise carry no weight, unless the language is particularly ambiguous. Courts generally disregard faulty punctuation and grammatical construction. Where there have been other statutes of a similar nature or dealing with parallel or similar subjects, the construction previously placed on these will be considered. All statutes are, moreover, to be interpreted in the light of the unwritten law—the common law. Health laws will generally be liberally construed unless they seem to contravene individual constitutional rights, when they will be more strictly construed. Penal statutes are more strictly constructed than nonpenal. If, after all the rules of construction have been applied to a statute, no sense can be made out of it, it is void. Likewise, if improperly passed, it is void.

It has been held in one case[18] that, in determining whether a statute

17. See *Words and Phrases Covering Judicial Constructions and Definitions from the Opinions of the State and Federal Courts.* Five series, 1904-1939. St. Paul, West (first four series have titles *Words and Phrases Judicially Defined* and *Judicial and Statutory Definitions of Words and phrases*).

18. *Benz* v. *Kremer* (1910), 125 N.W. 99, 142 Wis. 1, 26 L.R.A. (N.S.) 842. In *State Board of Health* v. *Willman* (1932), 241 Ky. 835, 45 S.W. (2d) 458,

(*Continued on next page.*)

is valid as a health regulation under the police power, the criterion is whether the public health in general will be promoted by the regulation and not whether it is required to promote the public health in isolated cases.

Theoretically, at least, it is not the function of any court to legislate, or to impose or inflict its own philosophy on legislation which is before it for interpretation and adjudication. Some of the most vigorous and able dissenting opinions of the United States Supreme Court have expressed the view of the dissenters that the Court was doing just that, especially with reference to some of the more recent federal legislation of a sociological character. Thus, Mr. Justice Frankfurter, in concurring in a dissent of the late Chief Justice Stone, in a case holding that the Federal Government and not a state government had jurisdiction over renovated butter, stated in no uncertain terms:

> If ever there was an intrusion by this Court into a field that belongs to Congress and which it has not seen fit to enter, this is it. And what is worse, the decision is purely destructive legislation . . . the Court takes power away from the States but is of course unable to transfer it to the federal government.[19]

After a Bill Has Been Drafted

After legislation has been properly and scientifically prepared, the next step, of course, is to get it through the legislature. A measure before the legislature is called a "bill"; after it has been passed and enacted, it is an "act." Every bill must go through a certain routine procedure before becoming a law. This varies in the different States, but there is a more or less general method patterned after the procedure in Congress.

Congress is established by Article I of the Federal Constitution and its powers are enumerated therein. The framers of our government intended that the Senate should represent the States and the House of Representatives the people, but they gave to each branch equal powers of legislation, and no bill can become a law without the assent of both the House and the Senate. Bills may originate in either branch, except that measures for raising revenue must have their origin in the House. Frequently, identical bills are introduced simultaneously in both houses. Sometimes a bill is suggested or drafted by a citizen and given to a member of Congress to present. Any member may introduce a

several sections of state law on plumbing were held void because they were not covered by the title of the act.

19. *Cloverleaf Butter Co.* v. *Patterson* (1941), 315 U.S. 148, 62 S. Ct. 491, 86 L. Ed. 754.

bill in his own name. Both houses have legislative drafting services which prepare bills in accepted legislative phraseology.

In the Senate and the House

The Senate consists of ninety-six members, two from each State. A senator who desires to introduce a bill must rise, be recognized by the Vice President, who presides over the Senate, and announce that he wishes to introduce a bill. It is then deposited beside the Vice President's desk, later read by a clerk and referred to the proper committee. The bill is considered by the committee, which may hold public hearings on it. The committee may then do one of four things: 1) report the bill favorably as it stands, 2) report it favorably with amendments, 3) report it unfavorably, 4) take no action at all. The number of bills introduced in Congress is legion. In one Congress from 2,000 to 20,000 bills and resolutions may be presented, depending, of course, upon the length of the sessions. Many of these bills never get out of committee. Usually this means that the bill has no chance of passage, but once in a while a motion is made that a committee be discharged from consideration of the bill, with the result that the bill is brought directly before the Senate.

When a bill is reported, it then goes upon the calendar. Under certain conditions, as where a bill is of especial importance, it may be called up out of order, but this is rare. When the measure comes up, it is open to debate. There is ordinarily, and sometimes unfortunately, no time limit on debate in the Senate. Amendments may be offered on the floor. After debate, the amendments and then the bill are voted on by calling for the ayes and nays, or by viva voce vote. If the bill passes, it it sent to the House for concurrence.

There are 435 members of the House of Representatives. The procedure in dealing with bills originally brought up in the House is, in general, similar to that of the Senate, but there are a few differences. The member introducing the bill simply drops it in a basket beside the Speaker's desk. It is referred to one of the numerous House Committees, and goes through the same course as in the Senate. There are three calendars in the House, the Union Calendar, relating to revenue, appropriations, and public property; the House Calendar, carrying other public bills; and the Private Calendar, consisting of private bills.[20] When the bill comes up, the House forms the Committee of the Whole

20. Dealing with claims, pensions, acceptance of foreign honors by individuals, and similar private matters. Unlike state legislatures, Congress may pass private legislation.

House. Time for debate is limited. Amendments may be offered from the floor. The amendments and the bill are finally voted on by viva voce vote, rising vote, taking the vote by tellers, or recording the ayes and nays, according to the demand of the House. If the bill is passed it goes to the Senate for concurrence.

When a bill which has already passed one branch of Congress is laid before the other, it may be passed as it is, amended and passed, left in committee, or rejected. If passed, it goes to the President. If amended, it goes back to the original branch for concurrence in the amendments, which may be done at once. If there is disagreement, each chamber appoints three members to form a conference committee to meet and settle the differences. The report is laid before each house, which may adopt it or disagree. Conferences are again held and this process is continued until both Senate and House have agreed on the measure. It then goes to the President, as an enrolled bill.

Before the Executive

The President has ten days, exclusive of Sundays and holidays, in which to take action. If he signs the bill, or fails to sign it within that period, the bill becomes a law and is known as an act. The act is sent to the Secretary of State to be numbered and filed as the original copy of the law. He, in turn, forwards a copy to the Public Printer to be printed for public use. The President may veto the bill, in which case it goes back to Congress with a written statement of his objections. Congress may, however, pass the bill over his veto by a two-thirds majority in each branch.

The exact method in use in each State can usually be ascertained without great difficulty.[21]

Municipal Ordinances and Regulations

Municipal legislation and quasi-legislation relating to the public health may be of two types: that passed by the municipal authorities themselves, such as the council, board of aldermen, etc.; or that adopted by the board of health. The respective powers of these governing bodies are usually set forth in the municipal charter or in the state laws. It is sometimes a matter of expediency as to which shall legislate or regulate, such items as the amount of allowable penalty being a factor. While boards of health have wide authority, they may not, as a general rule, pass any regulation contrary to one passed by the governing body of the municipality or one that is inconsistent with a state

21. See R. Luce, *Legislative Procedure*, Boston, Houghton Mifflin, 1922.

law or a regulation adopted by the state health department, as authorized by law. Usually, however, a municipal ordinance may be more strict in its terms than a state law, provided it does not contravene the terms of the law. Thus, if the state law says that the minimum allowable butterfat content of market milk shall be 3 per cent, but confers on local boards of health the power to regulate milk supplies, a board of health regulation setting a minimum standard of 3.25 per cent butterfat for local milk supplies would be valid. If, however, the state law declared that no milk dealer in the State shall be required to have more than 3.25 per cent butterfat in milk sold by him for human consumption, and a municipal ordinance or board of health regulation attempted to set a minimum standard of 3.50 per cent, the ordinance or regulation would be invalid as contrary to the state law.

Ordinances or regulations of boards of health must be passed in strict conformity to the requirements for their promulgation as laid down by state law. It is customary, of course, that they should be passed only at a duly called meeting of the board, at which a quorum is present. As a rule, several readings are required, usually three, with intervals between them. Publication of the proposed ordinance in a local newspaper is usually required and the public is entitled to be present at the board meeting to discuss the ordinance before it is passed. Local ordinances should be as carefully framed as state laws, in fact, even more carefully, for they may be more rigidly construed by the courts.

Only matters which it is intended to enforce should be placed in a local sanitary code and then these should be enforced and not be permitted to become decorative only.