

INDIANA STATE BOARD OF HEALTH. The quarantine and isolation of a tuberculosis patient removed from a tenement house by the Department of Health is controlled by Chapter 83, Acts 1903, and isolation must be in the city or county.

May 23, 1944.

Opinion No. 52

Hon. Thurman B. Rice, M. D.,
State Health Commissioner,
Indiana State Board of Health,
1098 West Michigan Street,
Indianapolis, Indiana.

My Dear Dr. Rice:

This will acknowledge your letter of May 2, 1944, in which is presented the following state of facts:

A man suffering from a far advanced case of tuberculosis lives in a congested tenement house in Princeton, Indiana. Five other families with children live in the same tenement. A child in one these families has a positive tuberculosis test, and the infection is considered to have been contracted from this advanced case. The presence of the man in the tenement is considered dangerous to the health of the other inmates and to the community.

It is understood that neither the city of Princeton nor Gibson County has at this time a building or other facilities for the isolation of contagious or infectious diseases.

On the foregoing state of facts you request an official opinion on the following question:

Has the proper local health officer the authority to order the man removed to, and quarantined in, the Silver Crest Hospital in New Albany, Indiana?

Section 35-407, Burns' 1933, being Sec. 7, Ch. 83, Acts of 1903, provides in part as follows:

"The state board of health and county board of health and any local board of health, or a majority

thereof, shall have power to remove * * * from any * * * tenement * * * to a proper place designated by such board, persons sick with any contagious, * * * disease, * * *.”

Section 35-408, Burns' 1933, being Sec. 8, Ch. 83, Acts of 1903, provides in part as follows:

“Whenever a health officer shall know or suspect or be informed of the existence of any communicable disease, dangerous to the public health, and there be no physician in attendance, or should any physician, while in attendance, fail or refuse to immediately report such case to the health officer, it shall be the duty of such health officer, or deputy, to examine such case or cases of alleged communicable disease dangerous to the public health, and if, in the judgment of such health officer, such afflicted person should be isolated and quarantined in a building set apart for the care and treatment of persons afflicted with said contagious or communicable disease, it shall be the duty of such health officer, and he is hereby empowered, to remove such afflicted person or persons to such building, and all expenses of such removal shall be paid by the board having jurisdiction of such cases, * * *: And be it further provided, That it shall be the duty of said board or such health officer to provide said building where such person or persons shall be quarantined as provided in this section with suitable beds, bedding, cooking utensils, and such other articles necessary for the comfort of said afflicted inmates; and said board or said health officer shall also, from time to time, as the same may be required, during said period of quarantine in said building, furnish the necessary food for the sustenance of said inmates and the said nurses and attendants during said period of quarantine, and the expense incurred for the supplies herein provided for shall be paid by the said board, as provided hereinbefore in this section.”

Section 35-411, Burns' 1933, being Sec. 11, Ch. 83, Acts of 1903, provides in part as follows:

“* * * Sheriffs, constables, marshals, police and all peace officers shall, if called upon by health officers, aid in the enforcement of this act.”

The above quoted sections of the statutes provide a procedure under which the local health authorities may remove the diseased man and quarantine him in a building in the city of Princeton.

Section 35-106, Burns' 1933, being Sec. 6, Ch. 15, Acts of 1891, reads in part as follows:

“The state board of health shall have * * * powers * * * to establish quarantine and to order and execute what is reasonable and necessary for the prevention and suppression of disease; * * *.”

Section 35-111, Burns' 1933, being Sec. 11, Ch. 15, Acts of 1891, reads in part as follows:

“The state health commissioner, all county health commissioners, and all city and town health officers shall have power * * *, to establish quarantine and, in connection therewith, to order what is reasonable and necessary for prevention and suppression of disease, * * *, and in all reasonable and necessary ways to protect the public health. * * *.”

Attention is called to the fact that the Southern Indiana Tuberculosis Hospital was created by Ch. 2 of the Acts of 1938, same being Section 22-2118, *et seq.*, Burns' 1943 Supplement. The rights, powers and duties pertaining to the operation of such institution by the superintendent and board of trustees is governed by the laws of the State regulating the Indiana State Sanatorium under Section 22-2123, Burns' 1943 Supp., same being Sec. 6, Ch. 2, Acts of 1938.

The Indiana State Sanatorium was created by Ch. 125, Acts of 1907, same being Section 22-2101, *et seq.*, Burns' 1933. Admission to the Indiana State Sanatorium, which would equally apply to the Southern Indiana Tuberculosis Hospital under above statute, requires an application for admission to such institutions by indigent persons under Section 22-2112, Burns' 1933, same being Sec. 14, Ch. 125, Acts of 1907, as amended, and by pay patients under Section 22-2114, Burns' 1933, same being Sec. 16, Ch. 125, Acts of 1907, as amended.

It is my opinion the legislature when it passed Ch. 83 of the Acts of 1903, same being Sections 35-407 and 35-408, Burns' 1933, supra, did not legislate regarding the forceable removal of patients to the Southern Indiana Tuberculosis Hospital or the Indiana State Sanatorium for quarantine purposes, against the will of such patients, as such institutions were not then in existence. I am further of the opinion the legislature in creating said tuberculosis hospitals, aforesaid, intended admission to be on the application of the patients rather than by compulsion.

Section 35-106 and 35-111, Burns' 1933, being Sections 6 and 11, respectively, Ch. 15, Acts of 1891, set out the general powers of the State Board of Health and its subordinate agencies, stating in substance that they may do what is "reasonable and necessary for the prevention and suppression of disease."

The Supreme Court of Indiana, in the case of *Blue v. Beach* (1900), 155 Ind. 121, on page 130, in deciding defendant school officials could legally exclude plaintiff's son from attending school during a smallpox epidemic, when the son had refused to be vaccinated as required by the health officers, said:

"In order to secure and promote the public health, the State creates boards of health as an instrumentality or agency for that purpose, and invests them with power to adopt ordinances, by-laws, rules, and regulations necessary to secure the objects of their organizations. While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the legislature, in view of the great public interest confided to them, have always received from the courts a liberal construction, and the right of the legislature to confer upon them the power to make reasonable rules, by-laws, and regulations, is generally recognized by the authorities."

On the question of reasonable rules and regulations by the health department, see *Jew Ho v. Williamson* (1900), 103 Fed. 10, 22. The court, in holding quarantine for bubonic plague of all "Chinatown" unreasonable, said:

"* * * The police power of the state may be enforced by quarantine and health officers, in the exer-

cise of a large discretion—as circumstances may require, * * *. To accomplish this purpose, persons afflicted with such diseases are confined to their own domicile, * * *. The object of all such rules and regulations, is to confine the diseases to the smallest possible number of people, * * *.”

Under the aforesaid general powers of the State Board of Health and its subordinate agencies, it is my opinion any action taken by said State Board of Health or its agencies must be reasonable and necessary for the protection of the public health in any given situation and can not be arbitrarily exercised.

In the case of Home Owners' Loan Corp. v. Wise (1939), 215 Ind. 445, the court in deciding a 1931 statute regarding proceedings to be followed in mortgage foreclosures controlled the provisions of the general law of 1881 on that subject, said on page 449 of the opinion:

“Since the 1931 act specifically covers the same subject-matter embraced in the old general law providing for foreclosure, and completely provides a procedure to be followed, it operates to repeal the general law to the extent of any conflict or repugnancy therein. State ex rel. v. Greenwald (1917), 186 Ind. 321, 327, 116 N. E. 296; Kingan & Co. v. Ossam (1921), 190 Ind. 554, 557, 131 N. E. 81.”

I am therefore of the opinion that Ch. 15, Acts of 1891, *supra*, giving general powers to the State Board of Health is repealed to the extent of any conflict or repugnancy contained in Ch. 83, Acts of 1903, *supra*, specifically outlining the procedure to be followed by the State Board of Health, and its subordinate agencies, in the removal of persons suffering from contagious and communicable disease from a tenement house. I am therefore of the opinion that Ch. 83 of the Acts of 1903 controls the procedure to be followed by the State Board of Health, or its subordinate agencies in the instant case.

Sections 35-407 and 35-408 apply specifically to the subject of quarantine and in my opinion provide the method and procedure by which a person suffering with a contagious

or infectious disease may be placed in a building in his city or county to be provided by the proper local authorities.

FOREIGN INSURANCE COMPANIES TRANSACTING BUSINESS IN INDIANA—What constitutes transacting business in the State of Indiana—Amalgamated Life Insurance Company of New York is not transacting business in the State of Indiana.

May 29, 1944.

Opinion No. 53

Hon. Frank J. Viehmann, Commissioner,
Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your inquiry concerning the Amalgamated Life Insurance Company of New York. Specifically, your question is whether in consideration of the articles of incorporation, agreement and declaration of trust, applications and proposed forms for insurance it is necessary for this company to qualify for the purpose of doing business in Indiana.

With respect to foreign insurance companies, Section 226 of Chapter 162 of the Acts of 1935 (39-4701, Burns' 1933) provides as follows:

"Any foreign or alien insurance company organized for the purpose of transacting any insurance business, not now qualified to transact business in this state, before transacting business in this state shall procure a certificate of authority from the department in the manner hereinafter provided and shall otherwise comply with the provisions and be subject to the regulations set forth in this article of this act."

Thus, if the company proposes to transact insurance business in Indiana, it must qualify under the terms of that act. The question still remains, however, whether the company is actually transacting or doing business within the State of Indiana. The determination of that question involves an