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withdrawal of one county therefrom can only be taken by the district board of health and cannot be accomplished by action of the board of supervisors of the county wishing to withdraw. Your stated question is answered in the negative.

FRANK J. KELLEY,
Attorney General.

HEALTH, DEPARTMENT OF: Venereal Diseases.

Under Act 6, P.A. 1942 and Act 272, P.A. 1919, the State Commissioner of Health, with the concurrence of the State Council of Health, may promulgate regulations to authorize the examination and treatment of minors without the consent of the parent or guardian.

No. 4204

August 16, 1963.

J. K. Altland, M.D.
Acting Commissioner
Michigan Department of Health
Lansing 4, Michigan

You have called my attention to Act 6, P.A. 1942, Second Extra Session, M.S.A. § 14.345(1) et seq., and Act 272, P.A. 1919, as amended, M.S.A. § 14.341 et seq., which deal with venereal disease control, and ask the following questions:

"1. Venereal diseases under Michigan law (Act 6, P.A. 2nd extra session, 1942) defines venereal diseases and declares them to be infectious, communicable and dangerous to the public health. Would examination and/or treatment of venereal diseases in persons who are twenty-one years of age or under, without consent of the parent or guardian, be considered 'assault' under Michigan statutes?"

"2. Can minors be legally examined or treated in a health department clinic without consent of parent or guardian?"

a) Is this also true by a private practicing physician?"

b) If this is not now legally possible can this be accomplished by a rule and regulation promulgated by the commissioner of health with the concurrence of the State Council of Health under the authority of Act 146, P.A. 1919, as amended by Act 83, P.A. 1954?"

c) If this cannot be accomplished by this method, is new statutory authorization required?"

These acts which you cite are within the police power of the legislature to enact and, therefore, the enforcement of said acts would not be a violation of private rights if no discrimination were employed by the administrative agency. If in the judgment of the health officers it is necessary to protect the public health, an examination and treatment of persons under 20 years of age without parental consent could not be considered "assault."

In the case of *Rock v. Carney*, 216 Mich. 280, the court held that a doctor who made a physical examination on a minor girl to determine

whether she had a venereal disease constituted an unlawful restraint of her liberties because of the detention in a hospital while undergoing the examination. Justice Wiest, concurring in the opinion said, at page 297, that there was no statutory authority for such examination but "if the law conferred the power exercised by the health officer in this instance, then children with any one of the numerous diseases now declared dangerous and communicable could be taken from their homes and sent to a hospital."

Since the acts giving grounds for the *Carney* suit were performed, Act 272, P.A. 1919 and Act 6, P.A. 1942 (Second Extra Session) were enacted which expressly relate to the control of venereal diseases.

Also, the Supreme Court in the case of *People, ex rel. Hill, v. Board of Education of the City of Lansing*, 224 Mich. 388, upheld the right of the board of education to require the exclusion from public schools of children, teachers and other employees who have not been vaccinated although the statute does not in express terms authorize the requirement of vaccination, saying at page 390:

"There is, however, a very marked trend in them (federal and state decisions) in one direction, that which upholds the right of the State in the exercise of its police power and in the interest of the public health to enact such laws, such rules and regulations, as will prevent the spread of this dread disease."

Quoting from the case of *Jacobson v. Massachusetts*, 197 U.S. 11, the court said:

"Real liberty for all could not exist under the operation of principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others."

See also O.A.G. 1947-48, No. 719, page 614.

Therefore, your first question is answered "no."

In answer to your second question, for the reasons stated above, minors may be legally examined and treated in a health department clinic without consent of parent or guardian.

a) If the health authority refers the afflicted minor to a private practicing physician, it would be within the contemplation of Sec. 7 of Act 272, which provides:

"If it shall be determined by the health officer of the city, village, township, county or district, that there is any person afflicted with venereal disease found within such city, village, township, or district who requires care, treatment, isolation or hospitalization, it shall be the duty of such health officer to provide such care, treatment, isolation or hospitalization as such person requires or may be necessary for the protection of the public in accordance with the rules and regulations made by the state commissioner of health as authorized in section 4 of this act. * * *"

It is assumed that there would be rules and regulations providing for this referral.

b) Sec. 4 of Act 272 and Sec. 7 of Act 146, P.A. 1919, M.S.A. § 14.1 et seq., authorizes the promulgation of rules and regulations for the control of venereal diseases, and with this authority the Commissioner of Health, with the concurrence of the State Council of Health, may promulgate regulations to carry out the purpose of the acts.

c) In view of the answers to the above questions, it is not necessary to answer this one.

FRANK J. KELLEY,
Attorney General.

CONSTITUTIONAL LAW: First Amendment to the Constitution of the United States, Article I, Sec. 4, and Article IX, Sec. 11 of the Revised Constitution of Michigan.

SCHOOLS: Transportation of public and nonpublic school students.

Act 241, P.A. 1963 is constitutional under the test of the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution of the United States.

Act 241, P.A. 1963 is in accord with the Revised Constitution of 1963, both as to Article I, Sec. 4 and Article IX, Sec. 11 thereof.

No. 4177

August 19, 1963.

Hon. William J. Leppien
State Senator
1103 Cornelius Street
Saginaw, Michigan

In your recent letter you have asked for my opinion in answer to the following question:

Does Act 241, P.A. 1963 violate either the First Amendment to the Constitution of the United States or Article I, Sec. 4 of the Revised Constitution of Michigan 1963, adopted by the electorate on April 1, 1963?

Act 269, P.A. 1955, as amended, is known as the School Code of 1955, being C.L.S. 1956, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq. Sec. 592 of the School Code of 1955 empowers a board of education, in its discretion, to provide bus transportation for students in attendance in private or parochial schools when the school district provides transportation for its students to the public school. The statute requires elementary and high school pupils to be treated equally when transportation is afforded non-public school students.

The legislature has amended Sec. 592 of the School Code of 1955 and other pertinent sections thereof through Act 241, P.A. 1963, effective July 1, 1964. Because the Public Acts of 1963 have not been published, we quote the provisions of Act 241, P.A. 1963, in full, as follows:

"Sec. 590a. Any school district transporting or paying for transportation of any of its resident pupils, except mentally and physically