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**HEALTH, DEPARTMENT OF: Rules and Regulations.**

The Michigan Department of Health has authority to promulgate regulations requiring institutions, whether public or private, laboratories, distributors, and others to annually report to it the pathogenic micro-organisms received from agencies outside of Michigan.

No. 4373

January 29, 1965.

Dr. Albert E. Heustis  
State Health Commissioner  
Department of Health  
3500 North Logan Street  
Lansing, Michigan

You request an opinion on whether or not Act 308, Public Acts of 1927 gives the Michigan Department of Health the right to require institutions, whether public or private, laboratories, distributors, and others annually to report to it pathogenic micro-organisms received from agencies outside of Michigan. This inquiry was prompted by our recent suggestion that you consider the possibility of enacting regulations which would govern the transportation of such shipments in the State of Michigan.

The adoption of any such regulation would fall under the broad powers of the State Health Commissioner. The State Health Commissioner is the chief executive of the Michigan Department of Health and is appointed and acts under Act 146, Public Acts of 1919 as amended.<sup>1</sup>

Under the provisions of Section 2 of the Act it is provided that:

"The state health commissioner shall have general charge and supervision of the enforcement of the health laws of the state of Michigan and shall have the specific powers and duties hereinafter expressed.  
\* \* \*"

and Section 7 provides:

"With the concurrence of the state council of health, any 3 of whom shall constitute a quorum, the state health commissioner may make and declare rules and regulations in accordance with the laws of the state for the proper safeguarding of the public health and for preventing the spread of diseases, or the existence of sources of contamination.  
\* \* \*"

The State Health Commissioner has general rule making authority for the purpose of safeguarding the public health from the spread of disease and the existence of contamination.

Section 1a of the Administrative Code, Act 88, Public Acts of 1943 as amended provides that the State agencies shall have the power to make rules to the extent that they are vested by law with rule making power.<sup>2</sup>

The power of administrative agencies to adopt rules was discussed in *Coffman v. State Board of Examiners In Optometry*, 331 Mich. 582. The

<sup>1</sup> M.S.A. 1956 Rev. Vol. § 14.1 et seq., C.L. '48 and C.L.S. 1961 § 325.1 et seq. Section 7 was amended but not in pertinent part by Act 83, P.A. 1954.

<sup>2</sup> M.S.A. 1961 Rev. Vol. § 3.560(7a), C.L. '48 § 24.71a.

Court in that case, at page 589, cited from *Salowitz v. State Board of Registration in Medicine*, 285 Mich. 214:

“In exercising supervision over the health of several millions broad discretionary powers must necessarily be granted, \* \* \*”

The exercise of this power is not unlimited but must have a true relation to the apparent danger to the public health. *Rock v. Carney*, 216 Mich. 280.

The power to make rules in this particular instance should be further interpreted in the light of Act 308, Public Acts of 1927.<sup>3</sup>

That Act provides in Section 1 as follows:

“All laboratories and other places where live pathogenic germs are handled or cultivated, shall be registered with the Michigan department of health, and a registration number shall be issued to each place registered. Registration and application for this registration number shall be made by the person, firm or corporation in charge of the laboratory or other place where such germs are handled. The registration number shall be valid for one [1] year, at the expiration of which time it may be renewed upon application.”

and under Section 2 as follows:

“All live pathogenic germs or cultures of such germs when given away or sold by a laboratory or other person, shall bear a label on the container showing the registration number of the laboratory or other person, the name of the person or firm obtaining same, and the destination of the germs, and no person or laboratory shall sell or convey any live germs or culture to any other person or laboratory without the permission of the state commissioner of health. Such person or laboratory shall also keep a record of every sale, gift or other distribution of live germs, giving the name and residence of the recipient or purchaser, which record shall at all times be open to examination by any person or authority, and a copy of which record shall be filed with the department of health.”

Section 3 of the Act provides for a misdemeanor penalty.

Rules and regulations are necessary to carry out the purposes of legislative acts. In the case of *Westgate v. Township of Adrian*, 161 Mich. 333, the Court had under consideration a statutory amendment which had been challenged as to constitutionality for the reason that the title of the act was not broad enough to cover the matter embraced in the amendment. Concerning this the Court said:

“It will be noted that the original title contains the word ‘regulate.’ Under that term, very broad powers may be exercised. It means both government and restriction. (citing cases).” (p. 335)

Examination of the two sections quoted above together with the title of the Act indicates that it is an Act intended to provide for: the registration and supervision of laboratories where live pathogenic germs are handled, prevention of the use of bacteria for criminal purposes, elimination of

<sup>3</sup> M.S.A. 1956 Rev. Vol. § 14.51 et seq., C.L. '48 § 325.51 et seq.

careless methods of transportation of live germs and to prescribe penalty for violation. This Act is basically a health measure intended to suppress introduction of disease in the State from germ sources.

We believe that the requirement of reporting to the Michigan Department of Health of pathogenic micro-organisms received from agencies outside of the State is necessary in order to prevent the introduction of disease in the State of Michigan and to carry out the purposes of the powers under Act 146, Public Acts of 1919 and Act 308, Public Acts of 1927. The powers in those Acts were given to protect public health. The rule requiring reporting would be in keeping with the requirements of the Acts relating to the regulation of laboratories.

The only objection that might be made to such reporting is that it would amount to a burden on interstate commerce. Such contention has no validity as the filing of a report amounts to the furnishing of information and this has been held not to unreasonably burden interstate commerce. See *Arkansas Louisiana Gas Co. v. Department of Public Utilities, et al.*, 304 U.S. 61, 82 L. ed. 1149.

It is, therefore, suggested that necessary regulations providing for annual reporting as outlined in your request be promulgated.<sup>4</sup>

FRANK J. KELLEY,  
*Attorney General.*

650129.1

**CONSERVATION, DEPARTMENT OF: Parks—Federal Funds.**

The Conservation Department has authority under Michigan statutes to administer the recently enacted Land and Water Conservation Fund under Public Law 88-578.

The Conservation Department has authority to accept and to administer funds, paid under Section 5(f) of the Land and Water Conservation Fund, Public Law 88-578, for approved State projects.

The Conservation Department does not have statutory authority under State law to transfer funds received under Public Law 88-578 to political subdivisions or other appropriate public agencies.

No. 4388

January 29, 1965.

Dr. Ralph A. MacMullan, Director  
Department of Conservation  
Stevens T. Mason Building  
Lansing, Michigan

You ask whether existing laws are adequate to permit the Department of Conservation to administer the recently enacted Land and Water Conservation Fund under Public Law 88-578.<sup>1</sup>

<sup>4</sup> Regulations to be adopted in accordance with the Administrative Code, Act 88, Public Acts of 1943, C.L. '48, § 24.71 et seq., as last amended by Act 161, Public Acts of 1964, M.S.A. 1961 Rev. Vol. § 3.560(7) and 1964 Current Material, Stat. § 3.560(7a) et seq.

<sup>1</sup> 88th Congress, 78 Stat. 897.