

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

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REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

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MERRILL & WEBBER CO., AUBURN, MAINE

PRINTERS AND BOOKBINDERS

PUBLIC HEALTH—POWER OF STATE DEPARTMENT  
OF HEALTH TO QUARANTINE THEATERS AND  
MOVING PICTURE HOUSES.

11th February, 1918.

*Dr. L. D. Bristol, Commissioner of Health, Augusta, Maine.*In Re: Authority of State Department of Health to  
Quarantine Moving Picture Houses.DEAR SIR: Chapter 19, Section 22 of the Revised Statutes  
provides:—

“\*\*\*\* And the board of health may from time to time, make, alter, modify or revoke rules and regulations for guarding against the introduction of any infectious or contagious diseases into the state, including rabies, or hydrophobia of animals and men; for the control and suppression thereof if within the state; for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such diseases; \*\*\*\*”.

The question is raised whether the State Department of Health can, under this law, make rules quarantining theaters and moving picture houses. It is our opinion that the State Department of Health has this power but that it must be used with discrimination and judgment and the regulations must comply with the following general rules.

The law has always recognized the existence of large powers in health officers to control the spread of contagious diseases. In 1874 the Supreme Judicial Court of Maine considered these powers in the case of *Seavey v. Preble*, 64 Maine 120, and *Walton J.* speaking for the Court said:—

“When the smallpox or any other contagious disease exists in any town or city the law demands the utmost vigilance to prevent its spread. ‘All possible care’ are the words of the statute. R. S. c. 14, sec. 30.

To accomplish this object persons may be seized and restrained of their liberty or ordered to leave the state; private houses may be converted into hospitals and made subject to hospital regulations; buildings may be broken open and infected articles seized and destroyed, and many other things done which under ordinary circumstances would be considered a gross outrage upon the rights of persons and property. This is allowed upon the same principle that houses are allowed to be torn down to stop a conflagration. *Salus populi suprema lex*,—the safety of the people is the supreme law—is the governing principle in such cases.”

In the case at hand the legislature has given the State Department of Health authority to make rules and regulations for quarantining persons, places and localities. The general rules governing such a statute are well settled and are as follows:

12 Corpus Juris, 848. Sec. 333.

“It is the function of the legislature, as a part of its police power, to make laws for the protection of the public health, and this power may not be delegated to an officer or board. The legislature, however, having enacted such laws in general terms, may confer on a board of health the duty of enforcing them, and to that end may give it authority to make reasonable rules and regulations which shall have the effect of law. \*\*\*\*”

From the above quotation, it is evident that the State Department of Health is limited to making regulations that fill in the details of the statute passed by the legislature.

There is a further limitation that the regulations adopted must have a substantial relation to the object of protecting public health. In the case of *Reduction Company v. Sanitary Works*, 199 U. S. 306, the Supreme Court of the United States had before it the authority of the local health authorities to make regulations, and said:—

“ \*\*\*\* persons and property are subject to all kinds of restraints and burdens, in order to secure the general comfort, health, and general prosperity of the State’—the public, as represented by its constituted authorities, taking care always that no regulations, although adopted for those ends shall violate rights secured by the fundamental law nor interfere with the enjoyment of individual rights beyond the necessities of the case. Equally well settled is the principle that if a regulation, enacted by competent public authority avowedly for the protection of the public health, has a real, substantial relation to that object, the courts will not strike it down upon grounds merely of public policy or expediency. *Railroad Co. v. Huzen*, 95 U. S. 465, 470, 471; *Mugler v. Kansas*, 123 U. S. 623, 661; *Lawton v. Steele*, 152 U. S. 133, 136; *Atkin v. Kansas*, 191 U. S. 207, 223; *Jacobson v. Massachusetts*, 197 U. S. 11, 27. In the recent case of *Dobbins v. Los Angeles*, 195 U. S. 223, 235, this court said that “every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health and safety, and that 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.”

There is a third requirement that regulations must be directed primarily to preventing the spread of contagious diseases. In

Jew Ho. Williamson, 103 Federal Reporter, 10, the Court said:—

“The purpose of quarantine and health laws and regulations with respect to contagious and infectious diseases is directed primarily to preventing the spread of such diseases among the inhabitants of localities. In this respect those laws and regulations come under the police power of the state, and may be enforced by quarantine and health officers, in the exercise of a large discretion, as circumstances may require. \*\*\* To accomplish this purpose, persons afflicted with such diseases are confined to their own domiciles until they have so far recovered as not to be liable to communicate the disease to others. The same restriction is imposed upon victims of such diseases found traveling. The object of all such rules and regulations is to confine the disease to the smallest possible number of people; and hence when a vessel in a harbor, a car on a railroad, or a house on land, is found occupied by persons afflicted with such a disease, the vessel, the car or the house, as the case may be, is cut off from all communication with the inhabitants of adjoining houses or contiguous territory, that the spread of the disease may be arrested at once and confined to the least possible territory. This is a system of quarantine that is well recognized in all communities, and is provided by the laws of the various states and municipalities; That, when a contagious or infectious disease breaks out in a place, they quarantine the house or houses first; the purpose being to restrict the disease to the smallest number possible, and that it may not spread to other people in the same locality.”

In the same case the Court noticed that the quarantine regulations under discussion affected only Chinese and were class regulations, and the Court said:—

“In the case at bar, assuming that the board of supervisors had just grounds for quarantining the district which has been described, it seems that the board of health, in executing the ordinance, left out certain persons, members of races other than Chinese. This is precisely the point noticed by the supreme court of the United States, namely, the administration of a law ‘with an evil eye and an unequal hand.’ Wherever the courts of the United States have found such an administration of the law, although it may be, upon the face of the act or of the ordinance, such a lack of discrimination as to otherwise justify, the ordinance or the law, still, if the court finds that in its practical operation, in its enforcement by the state or the municipality,—there is that opportunity, and that it is the purpose to enforce it ‘with an evil eye and an unequal hand,’ then it is the duty of the court to interpose, and to declare the ordinance discriminating in its character, and void under the constitution of the United States.”

It seems clear from the above decisions that the State Department of Health may make rules for quarantining theaters and moving picture houses under the following conditions:

1. That they do not extend their rules beyond the filling out of the details of the general act passed by the legislature.

2. That their rules for the protection of public health have a real substantial relation to that object.

3. That their rules are directed primarily to preventing the spread of such diseases among the inhabitants of localities and are reasonable rules for that purpose.

4. That their rules do not discriminate against any particular class of amusements or gatherings.

Yours very truly,

FRANKLIN FISHER,

*Assistant Attorney General.*

### PUBLIC RECORDS—USE OF CARD SYSTEM BY TAX ASSESSORS.

25th April, 1917.

*Board of State Assessors, Augusta, Maine.*

GENTLEMEN: Your inquiry as to whether it is sufficient for assessors of towns to use a card system or separate valuation book upon which actual description of real estate to be assessed is set forth with reference thereto incorporated in the general record or list of assessment, has been given my careful consideration.

Section 85, Chapter 10, Revised Statutes provides:—

“The assessors shall assess upon the polls and estates in their town all town taxes and their due proportion of any state or county tax, according to the rules in the latest act for raising a state tax, and in this chapter; make perfect lists thereof under their hands; and commit the same to the constable or collector of their town, if any, otherwise to the sheriff of the county or his deputy, with a warrant under their hands, in the form hereinafter prescribed.”

Section 88, Chapter 10, Revised Statutes, provides:—

“They shall make record of their assessment and of the invoice and valuation from which it was made; and before the taxes are committed to the officer for collection, they shall deposit it, or a copy of it, in the assessor's office, if any, otherwise with the town clerk, there to remain; and any place, where the assessors usually meet to transact business and keep their papers or books, shall be considered their office.”

There is a distinction between a “perfect list thereof under their hands” required by Section 85, and the “record of their assessment, etc.,” in Section 88. *The perfect list of assessment upon polls and estates in their town of all town taxes and their due*