



TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 82-049

PUBLIC HEALTH:
Jurisdiction of County Health
Department Over School Cafeterias

Honorable Charles R. Hartman
State's Attorney
Stephenson County
Courthouse
Freeport, Illinois 61032

Dear Mr. Hartman:

I have your letter in which you ask whether the Stephenson County Health Department has the authority and the duty to inspect school cafeterias within the county to determine whether such cafeterias are in compliance with State and county public health laws or ordinances. For the reasons hereinafter stated, it is my opinion that the county health department has the authority and duty to inspect school cafeterias.

The Stephenson County Health Department was established pursuant to the provisions of section 1 et seq. of "AN

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ACT in relation to the establishment and maintenance of county and multiple-county public health departments" (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 20c. et seq.). Under section 9 of the Act, a county health department has jurisdiction, for the purposes of the Act, throughout the entire county, except within a public health district, or a city, village or incorporated town of less than 500,000 inhabitants which has a health department and employs a full-time health officer, or within a city of more than 500,000 inhabitants. You advise that there are no public health districts or cities of 500,000 or more inhabitants in your county, and no cities, villages or incorporated towns which maintain a local health department and employ a full-time health officer. Consequently, by the terms of section 9 of the Act, the Stephenson County Health Department has jurisdiction throughout the county.

County health departments are managed by a board of health pursuant to section 13 of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 20c12). The principal powers and duties of the board of health of a county health department are set forth in section 14 of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 20c13), which provides in pertinent part:

"The board of health of each county or multiple-county health department * * * may make and adopt such rules for its own guidance and for the government of the health department as may be deemed necessary to protect and improve public health not inconsistent with this Act. It shall:

* * *

6. Within its jurisdiction, and professional and technical competence, enforce and observe all State laws pertaining to the preservation of health, and all county and municipal ordinances except as otherwise provided in this Act;

7. Within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of the State Department of Public Health, to arrest the progress of the same;

8. Within its jurisdiction, and professional and technical competence, make all necessary sanitary and health investigations and inspections;

9. Upon request, give professional advice and information to all city, village, incorporated town and school authorities, within its jurisdiction, in all matters pertaining to sanitation and public health;

* * *

The board of health of each county or multiple-county health department may:

1. Initiate and carry out programs and activities of all kinds, not inconsistent with law, that may be deemed necessary or desirable in the promotion and protection of health and in the control of disease including tuberculosis;

* * *

3. Recommend to the county board or boards the adoption of such ordinances and of such rules and regulations as may be deemed necessary or desirable for the promotion and protection of health and control of disease;

* * *

"

The above-quoted provision directs that a county board

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of health shall, within its jurisdiction, "enforce and observe all State laws pertaining to the preservation of health, and all county and municipal ordinances * * * ". A board has power to adopt rules and regulations to protect and improve public health and to carry out programs and activities of all kinds deemed necessary or desirable for the promotion and protection of health and control of disease. A board of health is required to "make all necessary sanitary and health investigations and inspections".

Section 25.12 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1981, ch. 34, par. 419) provides in pertinent part:

"During the period that 'An Act in relation to the establishment and maintenance of county and multiple-county public health departments', approved July 9, 1943, as amended, is in force in the particular county, to:

(1) do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; * * * .

* * *

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The statute clearly authorizes a county to do all acts and make all regulations which may be necessary or expedient for the promotion of health or suppression of disease. Such broad authority would necessarily include the power to adopt regulations regarding sanitary practices relating to places providing food services.

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Similarly, section 2 of "AN ACT in relation to public health" (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 22) provides that "the Department [Public Health] may adopt * * * rules and regulations and make such sanitary investigations and inspections as it may from time to time deem necessary for the preservation and improvement of the public health * * * ." The regulation of sanitary practices relating to drinking water or to persons handling food served to the public is specifically authorized. This section further provides in pertinent part:

"The State Department of Public Health * * * may adopt, promulgate, repeal and amend rules and regulations and make such sanitary investigations and inspections as it may from time to time deem necessary for the preservation and improvement of the public health, consistent with law regulating the following:

* * *

(b) Sanitary practices relating to drinking water made accessible to the public for human consumption * * *.

(c) Sanitary practices relating to * * * persons handling food served to the public.

* * *

All local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the state or any locality shall enforce the rules and regulations so adopted.

* * *

"

By enacting the aforementioned statutes the General Assembly has established a comprehensive plan for the protection of health. Counties are given the power to enact ordi-

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nances to protect public health, including ordinances pertaining to food service sanitation. You advise that Stephenson County has, by ordinance, adopted the rules and regulations for food service sanitation promulgated by the Illinois Department of Public Health. The county, through its board of health, is required to enforce its rules and regulations as well as the State regulations. None of the pertinent statutes exempts schools or school districts from compliance with county or State rules and regulations for water or food service sanitation. A comprehensive plan for the protection of health must necessarily require schools or school districts to comply with such rules and regulations.

Section 2-3.25 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 2-3.25) grants to the State Board of Education the power and duty "to determine for all types of schools conducted under this Act efficient and adequate standards for the physical plant * * * ventilation, sanitation, safety, equipment and supplies * * * and to grant certificates of recognition to schools meeting such standards by attendance centers or school districts * * * ". Similar authority is contained in section 3 of "AN ACT to provide for State aid to all school districts and counties, etc." (Ill. Rev. Stat. 1981, ch. 122, par. 737). It is my opinion that this general power and duty granted to the State Board of Education does not

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relieve the county health department of its specific duties and responsibilities to enforce and observe State health laws, and county and municipal ordinances, and to make necessary sanitary and health investigations and inspections.

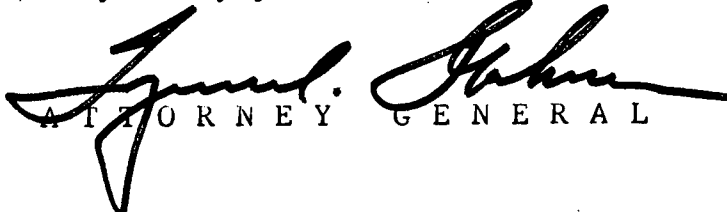
In County of Cook v. City of Chicago (1924), 311 Ill. 234, 248, the court held that a provision in the Cities and Villages Act, which authorized cities to have all buildings put in a safe condition, granted to cities such power over all buildings, including those of the county or other municipalities. You have referred to opinion No. 133, issued by Attorney General Castle (1954 Ill. Att'y Gen. Op. 117), in which it was concluded that schools which operate a school lunch program in territory over which the county health department has jurisdiction, are subject to the county health department's jurisdiction. That opinion is consistent with the opinion expressed here.

Smith v. Board of Education of City of St. Louis (S.Ct. Mo. 1949), 221 S.W. 2d 203, 205, is to the same effect. There the court held that an ordinance of the city of St. Louis, regulating sanitary conditions of restaurants in that city, applied to restaurants located in public school buildings and operated by boards of education, even though commissioners of school buildings are vested by statute with authority and responsibility to see to the sanitary condition of public school buildings.

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Therefore, it is my opinion that the Stephenson County Health Department has the authority and duty to inspect school cafeterias located in Stephenson County for compliance with State and county public health laws and regulations.

Very truly yours,


ATTORNEY GENERAL