

Vaccination of School Children—Compulsory Education Law.

The legislature has the constitutional authority to pass laws providing that all children who are attending school must be vaccinated. Such authority can be delegated by the legislature to state and county boards of health. Under Sections 4, 10 and 17, Laws 1901, p. 81, the legislature has delegated authority to

state and county boards of health to issue rules and regulations requiring children to be vaccinated before attending school whenever there is a case of small-pox anywhere in the state or anywhere in the county, as the case may be.

Wherever a county board of health has established rules and regulations pursuant to this authority, children can properly be excluded from the schools until vaccinated, notwithstanding the provisions of Chapter XLV, Laws of 1903, which provides that all children between certain ages must attend school. The fact that the parents or guardian of the children personally object to vaccination is not a legal or valid defense to an action against them for failing or refusing to send their children to school. They can be repeatedly prosecuted for failing to send their children to school, notwithstanding the fact that there is an order of the board of health in force prohibiting any children from attending school who have not been vaccinated.

March 15, 1905.

Thomas D. Tuttle, M. D., Secretary, State Board of Health, Billings, Montana:

Dear Sir:—The letter of Dr. H. H. Wilson, of Lewistown, Montana, addressed to you, and by you referred to this office for an opinion, to hand, the question therein submitted being: What can the school trustees or truant officer of a school district do with school children, not otherwise exempt from attendance at school, under Chapter XLV of the Laws of 1903, amending Sections 1920 to 1925 of the Political Code, who are not vaccinated and their parents or guardian will not have, or permit them to be, vaccinated, the county board of health having issued an order that no children shall be permitted to attend school until vaccinated?

It has been repeatedly held by the supreme courts of the various states that the legislature has authority to pass a law providing that no child shall be permitted to attend school until vaccinated, or that the legislature can by law delegate such authority to boards of health or to school trustees, and that such a law or order is reasonable and necessary for the preservation of the public health. (Com. v. Pears, 183 Mass. 242; Viemeister v. White, 72 N. E. 97; French v. Davidson, 77 Pac. 663; Abell v. Clark, 84 Cal. 226; Parker & Worthington on Public Health, Secs. 85, 86; In re Robenack, 62 Mo. App. 8; Duffield v. Williamsport School District, 162 Pa. 476; Bissell v. Davidson, 65 Conn. 183.)

In fact, several of the states have gone further and held that the legislature has power to delegate authority to boards of health to issue orders for every person to be vaccinated. (See Sec. 137, Chapter 75 Revised Laws of Massachusetts.)

The supreme court of Massachusetts, in the case of Commonwealth v. Pear, supra, held such a statute, and the rules and regulations made in v. Com. of Mass., 25 S. C. R. 358, and the supreme court of the United

States has affirmed the above decision of the supreme court of the United States has affirmed the above decision of the supreme court of Massachusetts. It may also be mentioned, in this connection, that Section 1, Chapter 44, Revised Laws of Massachusetts, provided for the compulsory education of children by a law similar to the compulsory education law of our state.

Under the above statutes and authorities, it is clear that the legislature of Montana has the constitutional right to pass laws requiring all children to be vaccinated before they shall be permitted to attend school, or to delegate such authority to boards of health to make and enforce such rules and regulations.

Has the legislature of Montana, in their delegation of authority to the state and county boards of health, made it broad enough to authorize such boards to issue rules and regulations prohibiting children from attending school, when such children are not vaccinated?

The rule of construction of such states is that "In view of the importance of the interests confided to the care of the health authorities, the various laws conferring these powers receive a liberal construction in aid of the beneficial purposes of their enactment." (Parker & Worthington on Public Health, Sec. 79.)

"The importance of sustaining local boards of health in all lawful measures tending to secure or promote the public health, should make the courts cautious in declaring any curtailment of their authority, except upon clear grounds." (Trenton Board of Health v. Hutchinson, 12 Stew. Eq. 218.) See also, State v. Zimmerman, (Minn.) 58 L. R. A. 78.

Section 4, Laws of 1901, establishing the State Board of Health, p. 81, says: "In the event of an epidemic or pestilential disease occurring in any county, city or village of the State, the Board shall forthwith cause all needful sanitary measures and precautions to be taken which the emergency may call for, and which may be consistent with law; * * *."

Section 10, of the same law, says: "It is the duty of the Board of Health of each County to establish for the county, or any part thereof, such reasonable sanitary rules and regulations as may be necessary to prevent the outbreak of infectious or contagious diseases. Any person failing or refusing to comply with or obey such rules and regulations is guilty of a misdemeanor."

Section 17, of the same law, provides that "Whenever any local or county health officer shall receive reliable notice, or shall otherwise have reason to believe that there is within the limits of his sanitary jurisdiction a case of small-pox or other disease dangerous to the public health, he shall immediately investigate the matter and take all proper steps for the restriction of suppression of such disease or diseases, * * *."

From said Section 4 of the laws of 1901 it appears that whenever an epidemic or pestilential disease occurs in any county, city or village, the State Board of Health may cause all needful sanitary measures and precautions to be taken. Under this section it must be held that whenever a pestilential disease occurs in any one of the places named therein the State Board of Health could adopt all needful sanitary measures and pre-

cautions, not only for that particular place but for all other counties, cities and villages of the State to which, in the judgment of the Board, such disease might spread.

And from said Sections 10 and 17, Laws of 1901, it appears that whenever, within the jurisdiction of the county board of health, there is found to exist a case of small-pox, or other disease dangerous to public health, "that such board of health may establish for the entire county, or any part thereof, such reasonable sanitary rules and regulations as may be necessary to prevent the outbreak of infectious or contagious diseases,"

From these sections it appears that whenever a case of small-pox is found in any part of the county, the county board of health may establish reasonable sanitary rules and regulations necessary to prevent any outbreak of the disease, not only in that part of the county, but for the entire county, if it is deemed a necessary precaution to prevent the spread of the disease over the county.

Such being the authority delegated to the boards of health, the next question to be determined, under these sections, is whether rules and regulations made by the state and county boards of health, prohibiting school children from attending the public schools unless vaccinated, are "needful and reasonable sanitary rules and regulations, necessary to prevent the outbreak of infectious or contagious diseases." That they are has been decided so often by the courts, and even enacted into law by so many of the states, that it can no longer be questioned. "Legislation requiring vaccination, or authorizing some local board to require it, as a pre-requisite to attendance at school, has been sustained whenever called in question * * * Legislation requiring vaccination is mentioned as a proper exercise of the police power in *Lawson v. Steele*, 152 U. S. 133." (Com. v. Pear, supra, and cases cited therein, and also *Viemeister v. White*, supra, and cases cited therein.) See also *In re Walters*, 84 Hun. 457, 32 N. Y. Supp. 322, and *Blue v. Beach*, 80 Am. St. (Ind.) 195.

Having thus decided that the legislature has delegated to the state and county boards of health the authority to make all needful and reasonable rules and regulations necessary for the preservation of the public health; and also, that a rule or order of the state or county board of health, providing that no children shall be permitted to attend the public schools unless vaccinated is a needful and reasonable rule and regulation necessary for the preservation of the public health, whenever there is small-pox in any place in the state or in the county, as the case may be, the next question to be determined is, what effect does such a rule requiring vaccination have upon the law requiring all children between the ages of eight and fourteen to attend school?

Said Chapter XLV, Laws of 1903, requires the parents, guardian, or other persons, who have the care of children between such ages, except in certain cases therein mentioned, to attend school for at least sixteen weeks during each current year, and provides further, for a punishment by fine of any parent, guardian, etc., who violates the provisions of such law.

It is claimed by some persons that the rule requiring all children

to be vaccinated before they can attend school is in conflict with this law, and that where the parents, guardian, etc., object to having their children vaccinated they cannot be punished for not sending their children to school when such a rule requiring vaccination is in force.

In our opinion this is not a correct construction of these laws. The rules and regulations requiring vaccination of school children before they can attend school, whenever there exists a case of small-pox, as mentioned above in this opinion, being a reasonable and necessary regulation for the preservation of the public health, as clearly shown by the authorities cited above, the failure or refusal of the parents, guardian, etc., to have their children vaccinated cannot be set up as a legal defense to an action against them for violating such law requiring them to send their children to school.

Under our laws there are many things required, of, and privileges denied, the individual in society for the good of society at large. Of such laws, those enacted for the preservation of the public health being among the most important. It often happens that an individual in society objects to a personal compliance with such laws; but for the good of the public health it is his legal duty to do so and he may be punished for not so doing. The fact that any member of society, as an individual, objects to any reasonable law, or regulation made under authority of law, for the preservation of the public health, does not make such personal objection to such a law or regulation a legal and valid defense to a prosecution against him for the violation of that law, or of any other valid law.

In the case of *Commonwealth v. Pear*, cited above, the court said: "The thirteenth and fourteenth offers of proof involve matters depending upon his personal opinion which could not be taken as correct, or given effect, merely because he made it a ground of refusal to comply with the requirements. Moreover, his views could not affect the validity of the statute, nor entitle him to be excepted from its provisions."

Laws which require children to be educated are reasonable and necessary laws enacted for the good of society, and the mere fact that an individual objects to having his children vaccinated, under a general law or regulation, pursuant to law, requiring children to be vaccinated in order to preserve the public health, is no justification or defense for his violation of the law requiring him to send his children to school, nor does it interfere with his so doing. Vaccination in the interest of the public health is merely a condition precedent to the child's right to attend school; and such child can be compelled to do both, viz: be vaccinated and attend school. Therefore, in our opinion, a parent, guardian, or person having the care of children may be prosecuted for violation of the law requiring them to send their children to school, regardless of their personal objection or refusal to comply with an order requiring the vaccination of all children attending school; and such parent, guardian, etc., may be repeatedly prosecuted for such violations until they, in some manner, provide for the education of their children, so as to comply with said Chapter XLV, Laws of 1903, and personal objection to vaccination, required by law or proper regulation pursuant to authority of law, as a

condition precedent to the child's right to attend school, is no defense. Of course, if the parent or guardian did not have the necessary money or credit to enable him to have his children vaccinated, then it would be the duty of the proper authorities of the county to provide for the vaccination of all such children, and the boards of health, in making rules and regulations requiring such children to be vaccinated, should provide therein for the free vaccination of all such cases, and such poor or indigent parents could not be prosecuted for not sending their children to school until after they had been given an opportunity to thus have their children vaccinated by the proper authorities.

Yours very truly,

ALBERT J. GALEN,
Attorney General.