

State Board of Health, Powers of. Powers, of State Board of Health to Condemn Mattresses. Mattresses, Powers of State Board of Health to Condemn. Inspection, of Cloth Mattresses.

It is not within the power of the state board of health to destroy or order destroyed property which is not infected, or which is not known to be unsanitary or infected with the germs of disease, nor can such board prohibit the sale of such articles. The board may, however, require reasonable inspection and disinfection of such articles.

March 11th, 1914.

Dr. W. F. Cogswell,
Secretary Department of Public Health,
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date of March 9th, submitting the question:

"Whether it is in the power of this board to condemn as unsanitary, and to forbid the sale of mattresses, so-called top wool mattresses, made of refuse, unsanitary rags, and imported into this state?"

I find no provision of our codes specifically giving to your board such power. If the board is clothed with such power at all, it must be found in Sec. 1477, Revised Codes of Montana, 1907, which is in part as follows:

"The state board of health shall have power to promulgate and enforce such rules and regulations for the better preservation of the public health in contagious and epidemic diseases as it shall deem necessary, and also regarding the causes and prevention of diseases and their development and spread."

Such powers as are granted by the above statute are usually liberally construed as being a necessary and legitimate exercise of the police power of the state. The limitations upon the exercise of such power have been expressed by one court in the following words:

"Ordinances passed under the power must not be unreasonable, partial or unfair, must not be in restraint of trade nor contravening the general laws of public policy."

Greensboro v. Ehrenreivch, 80 Alabama, 573.

Another court said:

"Lawful trade cannot be substantially prohibited under the guise of the police power unless it is so conducted as to be injurious or dangerous to the public health."

The cases approaching the present inquiry closest in the matter of facts are those of regulations concerning the importing or sale of second-hand clothing and rags, passed by various boards of health. The case is not exactly like those cases where clothing or bedding is destroyed after actual infection by some person having a contagious or infectious disease. Such regulations as that are universally upheld, the presumption that such articles are dangerous and infected with germs of disease being so well established as to be indisputable. Such a presumption does not attach to manufactured articles, since there is no direct proof that they are so infected. In other words, there is not the apparent necessity of total destruction in the case of mattresses or second-hand clothing as there is in the case of bedding and clothing previously used by an infected person.

Under a statute similar to ours, it was held that a regulation requiring that articles, the origin of which was unknown, be disinfected before they were sold, was not an unreasonable exercise of police power.

Train v. Boston Disinfecting Co., 144 Mass. 523.

And it has been held that under such a law as ours a board of health may require the disinfection not only of property that has been exposed to contagion, but of all articles liable to convey infection, especially where it is impossible to ascertain their history, or the place from which they originally came.

From a consideration of the construction put upon statutes similar to ours by numerous courts I have reached the following conclusions:

That it is not within the power of your board to destroy or order destroyed property which is not infected, or which is not known to be unsanitary or infected with the germs of disease; nor is it within the power of your board to prohibit the sale of such articles. This limitation upon your power, however, does not go to the extent of preventing you from requiring a reasonable inspection and disinfection of such goods when their origin is unknown to you, providing, of course, that such regulations are reasonable, impartial and fair.

Yours very truly,

D. M. KELLY,
Attorney General.