

Dear Dr. Cogswell:

You have requested my opinion concerning the duties of local health officers under the provisions of Chapter 126, Laws of 1943.

Section 2566, Revised Codes of Montana, 1935, was amended by Chapter 126, Laws of 1943, and as amended it provides:

"State, county, and local health officers, their authorized deputies or agents, within their respective jurisdictions, are hereby directed and empowered, when in their judgment it is necessary or desirable to protect or safeguard the public health, or to restrict or suppress prostitution, to make examinations of persons reasonably suspected of being infected with venereal disease, and of prostitutes and of any persons reasonably suspected of engaging in promiscuous sexual intercourse, and to detain such persons until the results of such examinations are known, to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured; and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease. Such examinations may be made repeatedly as often as deemed advisable or desirable. It shall be the duty of all local, county, and state health officers, or their authorized deputies, within their respective jurisdictions, to investigate sources of infection of venereal disease, to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution." (Emphasis mine.)

The above quoted section, before amendment, was considered by our Supreme Court in the case of *In re Caselli*, 62 Mont. 201, 204 Pac. 364. The Court said in regard to Section 2566 that:

"There is, perhaps, no authority to be found at this late day which denies that the legislature, under its police power, may enact laws authorizing the establishment of quarantine regulations and requiring the

Opinion No. 117.

Venereal Disease, control of—State Board of Health—Prostitution.

Held: Legislation providing for the examination and detention of persons reasonably suspected to being infected with venereal disease is a proper exercise of the state's police power. Health officials may order persons reasonably suspected of having a venereal disease, examined and, in the event they have a venereal disease, detained until the disease has been treated or arrangements made for the cure of the disease and steps taken to protect the public from infection. Grounds for ordering the examination and detention may not be based on mere conjecture but must be reasonable and consist of either actual information of the existence of the disease furnished by a reliable informant, or the fact the suspected person is a prostitute, associates with prostitutes and indulges in promiscuous sexual intercourse.

September 4, 1943.

Dr. W. F. Cogswell
Executive Officer
State Board of Health
Helena, Montana

detention of persons affected with contagious diseases dangerous to the public health without resort to a preliminary judicial proceeding to determine the character of the disease and the facts constituting the danger to public health. Under the statute before us the proper health officer may issue his warrant directing the arrest, without notice, of any person reasonably suspected of having a communicable disease, and his detention for the time being and until the existence and character of the disease can be determined; and, in case his course of conduct or condition is such, in the judgment of the health officer, as to render it necessary to protect the public health, to isolate such person until he recovers from the disease or until he may be released without further danger to the public."

The Courts of other states have upheld statutes similar to ours and have sustained them as a proper exercise of the police powers. (25 Am. Jur. 312.)

What evidence is necessary before the health officer is justified in directing the arrest of a suspected person is not susceptible of exact definition. It is to be noted that in the Caselli case the Court said:

"... the proper health officer may issue his warrant directing the arrest, without notice, of any person reasonably suspected of having a communicable disease. . ."

The facts upon which the health officer ordered the detention in the Caselli case are set out in the opinion. The facts were: the person detained had been plying her trade as a prostitute; she had been found by the police occupying the same bed with a man other than her husband at a place of ill repute; that she had been found upon the streets at night at places where women not engaged in prostitution would not be found.

I refer to the facts of the above case for the reason they illustrate the justification for detention and examination.

In the case of *Rock v. Carney*, 216 Mich. 280, 185 N. W. 798, the Michigan Court discussed the authority of a health officer to make examinations for venereal disease and said:

"It would be an intolerable interference by way of officious meddling

for health officers to assert and then assume the power of making physical examination of girls at will for venereal disease. . .

"I agree with my brother that, if the health officer had power at all to examine plaintiff, he had no right to exercise it without reasonable cause; such cause to precede examination and in no way to depend upon the result of examination. In any event, the defendant had no right to suspect and examine plaintiff so long as she had no accuser."

The foregoing question indicates the health officers are not to abuse the powers given them, and are not to interfere with the personal liberty of individuals by indiscriminate examinations for the purpose of ascertaining the presence of venereal disease. In other words there must be facts known to the health officer which would reasonably lead him to suspect the probability of the presence of a venereal disease before an examination may be ordered.

Section 2572, Revised Codes of Montana, 1935, affords means for giving the desired information to the health officers, as it provides in part:

"If an attending physician or other person knows or has good reason to suspect that a person having syphilis, gonorrhoea, or chancroid is so conducting himself or herself as to expose other persons to infection, or is about so conduct himself or herself, he shall notify the local or county health officer of the name and address of the diseased person, and the essential facts in the case."

Section 2570, Revised Codes of Montana, 1935, provides for the quarantine of persons infected with venereal diseases and Section 2567, Revised Codes of Montana, 1935, makes it mandatory for the county board of health of each county to provide an isolation hospital or treatment and care in a private hospital for such patients.

The authority and power granted health officers for the prevention, control and treatment of venereal diseases are broad, but the power of a health officer to order the detention and examination of an individual is to be based on reasonable grounds and facts and not on mere rumor or suspicion or conjecture.

It is my opinion:

1. Legislation providing for the examination and detention of persons reasonably suspected of being infected with venereal disease is a proper exercise of the state's police power.

2. State, county and local health officers may order persons reasonably suspected of having a venereal disease examined and, in the event they have a venereal disease, detained until the disease has been treated or arrangements made for the cure of the disease and steps taken to protect the public from infection.

3. Grounds for ordering the examination may not be based on mere conjecture but must be reasonable and consist of either actual information of the existence of the disease furnished by a reliable informant, or the fact the suspected person is a prostitute, or associates with prostitutes or indulges in promiscuous sexual intercourse.

Sincerely yours,
R. V. BOTTOMLY
Attorney General