

Influenza Epidemic

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INFLUENZA EPIDEMIC

This article is designed for the sole purpose of discussing from a purely legal point of view, the recent action upon the part of the health authorities to check the spread of influenza. That the influenza epidemic was prevalent there is no question. As many as 400 people died in one day in a single city. In Milwaukee alone there were 30,000 active cases reported.

Summary action was necessary. Under the police powers¹ vested in sovereignty to preserve the public health² the authorities not only had the power³ but by the law were under duty⁴ to check the spread of this most deadly disease. From the very exigencies of the situation summary action had to be taken.

Under the Constitution of the United States, no person can be deprived of life, liberty or property without due process of law⁵ and everyone is entitled to the equal protection of the law.⁶ That is to say, a notice and a hearing are necessary under the constitution to satisfy due process,⁷ and a reasonable classification and the like treatment of all persons of such class is essential to satisfy the equal protection clause of the constitution.⁸

In Milwaukee the common council of the city, pursuant to charter powers⁹ to prevent the spread of contagious disease passed the following resolution to meet the situation :

“Resolved, By the Common Council of the City of Milwaukee, that it shall be the duty of the Health Commissioner to take all steps within his power by law to prevent the spread of such contagious and infectious disease within the City of Milwaukee; and

“Resolved Further, That all places and establishments of every nature within the City of Milwaukee carried on by any person or persons or corporations detrimental to the

1. *Lieberman vs. Van De Carr*, 199 U. S. 553, 554, 558; *Lowe vs. Conroy*, 120 Wis. 155.

2. Sub. 4 of Section 1411.

3. *Milwaukee vs. T. M. E. R. & L. Co.*, 144 Wis. 386.

4. Section 1412; *Buckstaff vs. City of Oshkosh*, 92 Wis. 522.

5. Section 1 of Article XIV Amendm.

6. Section 1 of Article XIV Amendm.

7. XII Corpus Juris, p. 1190.

8. Section 1, Article XIV Amendm.

9. Section 1416, Sub. 13 of the Statutes; Sub. 22 of Section 3 of Chap. IV, and Sec. 11 of Chap. XIII of Milwaukee City Charter.

public health or likely to spread such contagious disease be closed during the period of the present emergency; and

"Resolved Further, That the Commissioner of Health shall immediately make reasonable regulations and classifications of such places and establishments to carry out the purpose of this resolution, and issue a general order in pursuance to such regulations and classifications; and

"Resolved Further, That it shall be unlawful for any such person, firm or corporation to carry on such places or establishments after having been notified by the Commissioner of Health by registered mail or personal service, by himself or any of the employes of his department or by any police officer of this city, in pursuance of this resolution, to close such place or establishment. Any person, firm or corporation violating any of the provisions of this resolution shall upon conviction thereof be subject to a penalty of not exceeding \$100.00 for each day such person, firm or corporation may violate this resolution, and in default of payment of such fine, be punished by imprisonment in the house of correction of Milwaukee County for not exceeding six months; and

"Resolved Further, That if any person, firm or corporation made in pursuance of this resolution they may file with the Commissioner of Health a complaint, which complaint shall be set for hearing as soon as practicable, and if in the opinion of the Commissioner of Health no good and sufficient cause be shown why such place or establishment shall not be closed, such place or establishment shall continue to be closed during the period of this emergency, but if the Commissioner of Health shall find no cause for the closing of such place or establishment, then such place or establishment may be carried on; and

"Resolved Further, That nothing herein contained shall in any way conflict with any charter laws relating to Milwaukee now in force, and all existing charter laws shall have full force and effect in reference to any subject matter or person included in this resolution."

Ald. Meisenheimer moved that all rules interfering with the adoption of the foregoing resolution at this time be suspended.¹⁰

These are the words of the common council, penned in the midst of an epidemic which was raging throughout the whole country.

This resolution was passed because there was some doubt as to the Health Commissioner's summary power to deal with this situation. An investigation of authorities shows beyond a

10. Resolution passed by Common Council, October 9, 1918.

doubt that the resolution does not contravene any law in this country.

By the resolution the Health Commissioner is to take all necessary steps to prevent the spread of contagious disease; which is practically the very words of the Wisconsin Statutes.¹¹

The Milwaukee City Charter provides that one of the duties of the Commissioner of Health is to close and discontinue¹² any place of business which is detrimental to the public health.¹³

This resolution is not unconstitutional¹⁴ nor does it deprive anyone of life, liberty¹⁵ or property¹⁶ without due process of law, because it provides for a complaint and a hearing to be shown, why such place of business shall not be closed.¹⁷

The punishment, the resolution provides for, is based on Section 4608d, the only difference being, the resolution provides the house of correction as the place of punishment while under the Statutes it is the county jail.

In short, this resolution is a repetition of the powers of the Health Commissioner under the laws of Wisconsin, making them more definite and certain.

These questions have already been presented to the Supreme Court of Wisconsin and the powers of the Health Commissioner were explicitly recognized.

Mr. Justice Winslow lays down the law that health officers, in order to accomplish results, must possess large and summary powers to deal at once with emergencies.¹⁸

Our Supreme Court has clearly said that the legislature may under its police power grant authority to boards of health to employ all necessary means to protect the public health and may even authorize such bodies immediately and summarily to destroy private property.¹⁹ This case is in accord with the weight of authority and is cited as one of leading cases on this subject.

11. Section 1412.

12. Chap. XIII, Sec. 11, Milwaukee City Charter.

13. *Pennoyer vs. Allen*, 56 Wis. 502.

14. *Kirk vs. Wyman*, 65 S. E. 392; *Lieberman vs. Van De Carr*, 199 U. S. 559; *Bittenhaus vs. Johnston*, 92 Wis. 588.

15. *Lieberman vs. Van De Carr*, 199 U. S. 559, 563.

16. *Lowe vs. Conroy*, 120 Wis. 157.

17. XII Corpus Juris, note at p. 1190.

18. *State ex rel Nowotney vs. Milwaukee*, 140 Wis. 40.

19. *Lowe vs. Conroy*, 120 Wis. 155.

Statutes and ordinances passed for the protection of public health are constitutional²⁰ although they may require the destruction of property when necessary and do not violate the constitutional guaranty of enjoyment of liberty and property.²¹ A section of the South Carolina code corresponding to Section 1416 of the Wisconsin Statutes is not unconstitutional as a delegation of legislative power.²² Further, that it is the duty of the court to construe inquiries concerning health laws and regulations liberally in favor of its lawfulness.²³

Pursuant to such resolution and in virtue of the powers conferred by law upon the Health Commissioner, five health²⁴ orders were issued, one closing all theaters, movies, churches and prohibiting public dances, indoor amusements and entertainments, another closing swimming pools, races, forbidding football games and other outdoor games where large numbers of people congregate, community singing, public funerals, public gatherings of all kinds, whether indoors or out, the public zoo at Washington Park, the conservatory at Mitchell Park. Another closed all saloons except such saloons as do not allow loitering on the premises or serve meals on such premises; by still another order all schools, public or private, Sunday schools, high schools, continuance schools, and so on, were closed.

In formulating these orders the health authorities were very careful, and with the advice of an advisory board every classification was discussed and reasons for such classifications advanced before any orders were issued.

That public opinion has favored this resolution there is no doubt, for there were very few violations of the orders.

The results were very beneficial. That class of people among whom disease is predominant, but who do not read and follow statistics did not know how rapidly the epidemic was spreading, realized at once how serious a matter they faced when they heard that schools and even churches were being closed. All were conscientiously guarding their health in furtherance of the Health Commissioner's orders.

20. *Kirk vs. Wyman*, 65 S. E. 391, 392.

21. *Kirk vs. Wyman*, 65 S. E. 393.

22. *Kirk vs. Wyman*, 65 S. E. 389.

23. *Kirk vs. Wyman*, 65 S. E. 394.

24. See official publication of such orders in the *Evening Wisconsin and Daily News*, the official paper of Milwaukee.

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Milwaukee is greatly indebted for the noble work of Dr. George C. Ruhland, the Health Commissioner, for saving the lives of thousands of Milwaukee's men, women and children.

Mr. Max Schoetz, Jr., First Assistant City Attorney, is also included in this vote of appreciation for his assistance to the Health Commissioner.

BELLE BORTIN.

