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County of Erie

DENNIS T. GORSKI
COUNTY EXECUTIVE

DEPARTMENT OF HEALTH

ARNOLD N. LUBIN, M.D.
COMMISSIONER OF HEALTH

January 26, 1999

Dear Board of Health Member:

The next Board of Health Meeting is scheduled for Tuesday, February 23, 1999 at 3:30 P.M. in Room 904 of the Rath Building.

The minutes of the last Board Meeting are enclosed for your review. An Agenda will be distributed at the meeting.

If you are unable to attend, please notify my office at 858-7660. Thank you.

Sincerely,

Arnold N. Lubin, M.D.
Commissioner of Health

Encl.
ANL/maa

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ERIE COUNTY BOARD OF HEALTH MEETING

MINUTES

June 23, 1998

Room 904 Rath Building

This meeting of the Board of Health was convened by Dr. Richard Judelsohn, President of the Board of Health

PRESENT: BOARD OF HEALTH

**Richard Judelsohn, M.D.
Joseph Bernat, D.D.S.
Catherine Lyons
Margrethe McBride
James Hoddick, D.D.S.
Barbara Guida**

DEPARTMENT OF HEALTH

Peter Coppola, Environmental Health

DEPARTMENT OF LAW

Richard Schechter

GUEST

Paula Celestino, Roswell Park Cancer Institute

EXCUSED:

**Daniel Kozera, M.D.
Honorable William Pauly
Joan Sulewski, M.D.
Victor Marr
Arnold N. Lubin, M.D.**

Dr. Judelsohn introduced the newest board member, Dr. Bernat to the rest of the Board of Health. Dr. Judelsohn familiarized Dr. Bernat with the various programs run within the Department of Health and also spoke of the Board Members who were excused from the meeting. He announced that Victor Marr had sent a letter of resignation from the Board of Health to Mr. Gorski, Erie County Executive, with copies to Dr. Lubin and Dr. Judelsohn.

MINUTES

Dr. Judelsohn called the meeting to order. The minutes of the April 28 meeting were reviewed. Dr. Hoddick made a motion to approve the minutes.

COUNTY SANITARY CODE DELETIONS

Dr. Judelsohn introduced Peter Coppola from the Environmental Health Division to address the Board regarding deletions from the Sanitary Code. These articles duplicate regulations in the State Sanitary Code, which make them unnecessary. A copy of the proposed deletions was distributed to the board members. The proposed articles for deletion were reviewed. Mr. Coppola explained that over the years the State Health Department has become a larger agency and is much more encompassing than the County Sanitary Code.

Dr. Judelsohn addressed Article VII regarding Summer Camps, where the County still does play a role. Mr. Coppola indicated that once a year we sign a contract with the State Health Department which says that the Erie County Health Dept. will regulate facilities based upon the State Sanitary Code. Items such as water supplies, bathing beaches, swimming pools and children's camps are regulated by the Erie County Health Department, and we basically use the State Sanitary Code for enforcement purposes.

Mr. Coppola indicated that there are certain situations which must be enforced through the County Sanitary Code such as Sewage disposal systems and tattoo regulations. The smoking part of the County Sanitary Code can be removed because it is superseded by the local law. Mr. Coppola indicated that two laws are used regarding the regulation of smoking. One is the State law which has to do with accessibility of tobacco products, the sale of tobacco products to minors, smoking on school grounds. The other aspect of this is smoking in public places which is by Erie County Law more stringent than the State law. Sometimes the State law is applied, and at other times the County law is used. This article could be removed from the County Sanitary Code.

Dr. Judelsohn made a motion to remove the proposed deletions to the Sanitary Code, Dr. Hoddick seconded the motion, and the Board approved it. Mr. Schechter indicated that he would look into whether or not a public hearing must be held regarding deletions to the Sanitary Code. The motion is contingent upon a public hearing if necessary.

REGISTRATION OR LICENSURE OF ESTABLISHMENTS SELLING TOBACCO PRODUCTS

Mr. Schechter indicated that he had reviewed the proposal. He said that in order to amend the Sanitary Code there has to be some authority from which it can be amended in the Public Health Law. He reviewed the Public Health Law and could not find any authority regarding the registration of tobacco establishments in addition to finding statutory authority there has to be a direct public health rationale as to why registration is mandated. Mr. Schechter did not think that this was a direct correlation between the reason for the amendment and the public health and the public health rationale. However, there may be a grant from the State to identify and register tobacco retail establishments; the County will receive grant money from the State level. Perhaps there was authority from the State enabling legislation that allows us to do this. However, Mr. Schechter reiterated that he could not find any authority in the New York State Public Health Law.

Mr. Coppola indicated that the Schenectady Law was a Local Law adopted by the Legislature. Mr. Schechter said that there is nothing that prohibits the Legislature which can regulate businesses and establishments, from enacting the law. There are requirements to be followed at the Legislative level, Public Hearings and debates on whether this law is good, bad or indifferent. If there is a fee involved it requires a 2/3 vote of the legislature to enact it. Dr. Hoddick said that apparently the Board does not have the authority to enact the law. Mr. Coppola said that the grant occurred through an initiative from the Governor's office to do something about teenage smoking, not on anything from the Public Health Law. Dr. Hoddick wanted to table the issue until the Board finds out if they have the authority to act upon it. Paula Celestino questioned terms of a public health issue and Mr. Schechter answered that there were two requirements, one being that there be statutory authority for the Sanitary Code Amendment in the State Legislation, and second that there be some health benefit that would result from registering retail tobacco establishments; given some benefit, this would probably make an indirect argument that it does. Ms. Celestino commented that the basis of wanting to do this is so that there would be a more complete list for compliance checks, in theory it would reduce access, and this would be a health benefit. Mr. Schechter said we still need the statutory authority, and he could not find

it. Dr. Judelsohn said that we need both statutory authority and a public health benefit. Ms. Celestino said that she thought we had the public health benefit part, Mr. Schechter said that we could certainly make the argument. Whether it is challenged remains up to the court. Mr. Coppola indicated that the Board of Health could make a recommendation or petition the County Legislature to enact something similar to this, based on the health concerns or health benefit that could come from enacting this law. Mr. Schechter said the Legislature has wider discretion and can regulate businesses, but in dealing with the smoking prohibition in public places, there is much more debate at a public, elected forum than there may be at the Board of Health. The City of Buffalo Common Council passed a resolution asking the Board of Health to look into this matter. Dr. Judelsohn suggested that perhaps Ms. Celestino could help in looking for the statutory authority through her resources at Roswell Park and asked Mr. Coppola to check the grant. He also suggested that perhaps the Board present a resolution to the Erie County Legislature.

Mr. Coppola also passed out some revisions to the original draft for the registration of tobacco businesses. He went on to explain that it starts out with definitions, primarily based on State law that regulates smoking and tobacco businesses. It requires a certification, and a registration certificate issued by the Commissioner of Health. He went on to explain that it is not only subject to whether or not the Board is able to enact it, it is also subject to looking at the law to see if in fact it is doing what we are asking it to do is acceptable. One of the provisions inserted is a very strong enforcement part. There was an ensuing discussion of the sections of the proposed law.

Ms. Guida brought up the issue of quantity of tobacco products. Mr. Coppola went on to say that he thought quantity was not really an issue, but what the intent is, such as selling to minors. Mr. Schechter interjected whether it is a local law or an amendment to the Sanitary Code, assuming there is authority to do so, we must provide due process to the people against whom we are going to enforce. He went on to say that Mr. Coppola is familiar with the enforcement set forth in the Sanitary Code for enforcement regarding the issuance of health permits to sell food; we must afford the same due process in this or the legislature will if it is a local law. Mr. Coppola went on to explain for example, in the case of a restaurant having numerous violations, the Commissioner of Health has the authority to enforce, generally a Commissioner's stipulation is sent out, which explains that the restaurant is charged with these various violations of the State Sanitary Code, and is required to operate the facility within the minimum standards of the code. If the establishment wants to avoid a Commissioner's Hearing then it must adhere to the stipulations given by the Health Department. This includes a fine in a certain amount. He went on to explain that if the establishment does not meet the requirements of the stipulation then it would go to the next step, which would be a Commissioner's Hearing.

This is the due process that Mr. Schechter was speaking of. At the Commissioner's Hearing the Health Dept. has to prove that 1. there is a law, 2. and that the particular establishment is violating the law. If we prove this then the Commissioner can order a fine and a seizure of the product. Ms. Lyons questioned the "due process" aspect, Mr. Coppola said that in 2. of the Enforcement part of the law, the notice and opportunity for a hearing has been provided provides due process, because we are offering two opportunities. One is to plead liable to the charges, or two, not plead liable and have a hearing. After the hearing either a fine or seizure will take place. Ms. Guida questioned if this actually needed to be legally stated that they have to follow the procedures specifically. Mr. Schechter responded that we can outline the process by which due process is afforded or we can incorporate by reference the section of the Sanitary Code that does this. Again if we do not present a potential violator with due process we will be challenged.

Dr Hoddick questioned who would be responsible for the certificate, the vendor, owner, or operator (the machine operator or the premise operator), Mr. Schechter answered that it would be the owner of the establishment that allows the vending machine on his premises. Of the issuance being every three years, Mr. Coppola explained that since we are not collecting a fee for the registration, we would like to minimize the paperwork involved. At the end of the term we have to send out an application, it has to be returned to us and processed, and then we must send out the certificate. The law would only be effective when we observed a sale taking place, only then could be cite the owner.

Dr. Hoddick made a motion to defer this topic to another meeting and suggested that the Board find out if they have the jurisdiction to enforce this law, and be presented with an updated version at the next meeting. Dr. Judelsohn suggested that in the meantime Ms. Celestino search out statutory evidence, and Mr. Coppola look at the grant, that we could communicate to the Legislature that we are interested in passing such a law, and with the public health benefits of their law reducing second hand smoke, that we have now been able to turn our attention to other aspects of bad health, such as teenage smoking, and in that realm we are discussing the registration law, and indicate that they may want to consider something like this. Mr. Schechter commented that if the Legislature decides to enact something, that could take the Board's authority to do so away from them. Revise the proposal, come back to the Board, and if we do not have the authority to enact it, we can send it to the Legislature, the Chairman of the Health Committee.

We will have the revised proposed law sent to the Board Members precluding the next meeting, which was set for Tuesday, September 15, 1998 at 4:00 P.M. Dr. Hoddick moved to adjourn the meeting.

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