AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 7: The Republican Era – Separation of Powers/Nondelegation of Legislative Powers

**Blue v. Beach, 155 Ind. 121 (IN 1900)**

*In 1891, the board of health of the state of Indiana had issued a regulation, known as Rule 11, directing the local boards of health to “compel a vaccination or revaccination of all exposed persons,” when the danger of a smallpox epidemic had arisen. The local board of health determined that there was such a danger of a smallpox epidemic in the city of Terre Haute and directed the local school board and public school superintendent to exclude any students who had not been vaccinated from the school. Frank Blue contended that the danger of epidemic had passed and that the smallpox vaccine carried its own medical risks, and thus his son, Kleo, did not need to be vaccinated and showed no symptoms of being infected with smallpox. Nonetheless, the school superintendent prevented Kleo from entering the school.*

*Blue sought an injunction in state court barring school officials from excluding his son from the public school. The trial court ruled in favor of the school officials, and Blue appealed to the state supreme court. Blue argued that his son had a statutory right to attend the public school, and that there was no statute requiring vaccination in order to attend school. He contended that the board of health had exercised a legislative power by creating a rule that mandated vaccination and that excluded children from school who had not been vaccinated. The state supreme court unanimously affirmed the trial court and upheld vaccination order as a reasonable administrative step in fulfilling the board’s statutorily imposed duty of preventing the spread of infectious diseases.*

Judge [JORDAN](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I215b0bc634f411e9bc5c825c4b9add2e).

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There is no express statute in this state making vaccination compulsory, or imposing it as a condition upon the privilege of children attending our public schools; and, in the absence of such a law, the act of appellees in excluding Kleo Blue from the public schools in question must, under the facts, be justified, if at all, as a public emergency, under the rules and orders of the respective boards of health. . . . In 1891 the legislature of this state passed a statute creating and establishing a state board of health, and investing it with certain powers. By section 5 of the original act, this board is expressly authorized and empowered to adopt “rules and by-laws, subject to the provisions of this act and in harmony with other statutes in relation to the public health, to prevent outbreaks and the spread of contagious and infectious diseases.” Section 6718 provides that it shall be the duty of local boards of health to protect the public health by the removal of causes of disease, when known, and in all cases to take prompt action to arrest the spread of contagious disease, to abate and remove nuisances dangerous to the public health, and to perform such other duties as may from time to time be required of them by the state board of health, pertaining to the health of the people. . . . This power the common council of that city seems to have exercised by establishing a board of health, under the ordinance of 1881, and investing it with authority to make and enforce such rules and regulations as the board might deem necessary “to promote, preserve and secure the health of the city and to prevent the introduction and spreading of contagious, infectious or pestilential diseases.” . . . . That the rule or by-law adopted by the state board of health, and the order of the local board, were each intended to secure and protect the public health, by preventing the spread, in its virulent form, of the contagious and loathsome disease of smallpox, there certainly can be no doubt. That the preservation of the public health is one of the duties devolving upon the state, as a sovereign power, cannot be successfully controverted. In fact, among all of the objects to be secured by governmental laws, none is more important than the preservation of the public health; and an imperative obligation rests upon the state, through its proper instrumentalities or agencies, to take all necessary steps to promote this object. This duty finds ample support in the police power, which is inherent in the state, and one which the latter cannot surrender. . . .

In order to secure and promote the public health, the state creates boards of health, as an instrumentality or agency for that purpose, and invests them with the power to adopt ordinances, by-laws, rules, and regulations necessary to secure the objects of their organization. While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the legislature, in view of the great public interest confided to them, have always received from the courts a liberal construction; and the right of the legislature to confer upon them the power to make reasonable rules, by-laws, and regulations isgenerally recognized by the authorities. . . . . It is true that such rules and by-laws must be reasonable, and boards of health cannot enlarge or vary, by the operation of such rules, the powers conferred upon them by the legislature; and any rule or by-law which is in conflict with the state’s organic law, or antagonistic to the general law of the state, or opposed to the fundamental principles of justice, or inconsistent with the powers conferred upon such boards, would be invalid. . . . As a general proposition, whatever laws or regulations are necessary to protect the public health and secure public comfort is a legislative question, and appropriate measures intended and calculated to accomplish these ends are not subject to judicial review. But nevertheless such measures or means must have some relation to the end in view, for, under the mere guise of the police power, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded by the legislative department; and consequently its determination, under such circumstances, is not final, but is open to review by the courts. If the legislature, in the interests of the public health, enacts a law, and thereby interferes with the personal rights of an individual,–destroys or impairs his liberty or property,–it then, under such circumstances, becomes the duty of the courts to review such legislation, and determine whether it in reality relates to, and is appropriate to secure, the object in view; and in such an examination the court will look to the substance of the thing involved, and will not be controlled by mere forms. *In re Jacobs* (NY 1885). It is affirmed by the authorities, as a general proposition or rule, that no one has a right to do any act which will cause injury to the health of another, or which will disturb his bodily comfort. Still, this right of security to health or comfort cannot remain absolute in a state of organized society, but is sometimes required to give way to the demands of trade or other vital public interests.

It cannot be successfully asserted that the power of boards of health to adopt rules and by-laws subject to the provisions of the law by which they are created, and in harmony with other statutes in relation to the public health, in order that the “outbreak and spread of contagious and infectious disease” may be prevented, is an improper delegation of legislative authority, and a violation of article 4, § 1, of the constitution. It is true, beyond controversy, that the legislative department of the state, wherein the constitution has lodged all legislative authority, will not be permitted to relieve itself of this power by the delegation thereof. It cannot confer on any body or person the power to determine what the law shall be, as that power is one which only the legislature, under our constitution, is authorized to exercise; but this constitutional inhibition cannot properly be extended so as to prevent the grant of legislative authority to some administrative board or other tribunal to adopt rules, by-laws, or ordinances for its government, or to carry out a particular purpose. It cannot be said that every grant of power to executive or administrative boards or officials, involving the exercise of discretion and judgment, must be considered a delegation of legislative authority. While it is necessary that a law, when it comes from the lawmaking power, should be complete, still there are many matters relating to methods or details which may be by the legislature referred to some designated ministerial officer or body. All of such matters fall within the domain of the right of the legislature to authorize an administrative board or body to adopt ordinances, rules, by-laws, or regulations in aid of the successful execution of some general statutory provision. *Locke’s Appeal* (PA 1873) . . . That the power granted to administrative boards, of the nature of boards of health, etc., to adopt rules, by-laws, and regulations reasonably adapted to carry out the purpose or object for which they are created, is not an improper delegation of authority, within the meaning of the constitutional inhibition in controversy, is no longer an open question, and is well settled by a long line of authorities. *Board v. Spitler* (IN 1859); *State of Minnesota ex rel. Railroad & Warehouse Commission v. Chicago, Milwaukee, & St. Paul Railway Company* (MN 1889); *Field v. Clark* (1892).

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. . . . It is certainly evident that the health board of the city of Terre Haute, regardless of the rule of the state board, had, under the law, ample power to protect the public health, and to prevent the spread of contagious and infectious diseases, and for such purposes had the right to adopt such appropriate and reasonable means or methods as its judgment dictated. This being true, and an emergency on the account of danger from smallpox having arisen, and the board believing, as we may assume, that the disease would spread through the public schools, and further believing that it would be prevented, or its bad effects lessened, by the means of vaccination, and thereby afford protection to the pupils of such schools and the community in general, it would certainly have the right, under the authority with which it was invested by the state, to require, during the continuance of such danger, that no unvaccinated child be allowed to attend the public schools; or the board might, under the circumstances, in its discretion, direct that the schools be temporarily closed during such emergency, regardless of whether or no the pupils thereof refused to be vaccinated. . . . The facts alleged in the answer show that there had been an exposure in the community to smallpox, and that there was danger of an epidemic of that disease within the city of Terre Haute. Evidently, then, under the circumstances, prompt action upon the part of the health authorities, in taking steps to arrest or prevent the spread of the disease, was essential. The first step taken by the board, it appears, was to prevent the spread thereof throughout the community by the children who each day assembled at the public schools from all parts of the city. It is a well-recognized fact that our public schools in the past have been the means of spreading contagious diseases throughout an entire community. They have been the source from which diphtheria, scarlet fever, and other contagious diseases have carried distress and death into many families. . . .

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. . . . The order was the offspring, as we have seen, of an emergency arising from a reasonable apprehension upon the board’s part that smallpox would become epidemic or prevalent in the city of Terre Haute. The rule or order could not be considered as having any force or effect beyond the existence of that emergency; and Kleo Blue, by virtue of its operation, could only be excluded from school, upon his refusal to be vaccinated, until after the danger of an epidemic of smallpox had disappeared. Any other construction than this would render the rule or order absurd, and place the board in the attitude of attempting to usurp authority. . . .

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. . . . It is said in appellant’s brief that there was no investigation upon the part of the health authorities to ascertain whether his son had been exposed to smallpox. It appears, however, that there had been an exposure upon the part of the community; and it would be an absurdity, under such circumstances, to require the health officials, before taking action to prevent the spread of the disease, to investigate in order to determine the degree of exposure to which every person in the community had been subjected. The question as to what is an exposure to smallpox, so as to be affected thereby, is certainly one which, in the main, must be left to the sound discretion or judgment of the health officers. The supreme court of Massachusetts, in speaking in regard to the right of boards of health to make general orders, and enforce them without unnecessary delay, said, “Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and death, and it is important that their proceedings should be embarrassed or delayed as little as possible by the unnecessary observance of formalities.” *City of Salem v. Eastern Railroad Co.* (MA 1868).

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*Affirmed*.