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

**State ex rel. McBride v. Superior Court for King County, 103 Wash. 409 (WA 1918)**

*The city of Seattle adopted an ordinance “for the preservation of the public morality, peace, safety, and good order of the city” that provided the city sanitation department would examine any individual taken into custody by the police “who are suspected of being afflicted with any contagious or infectious disease or malady.” If the city health commissioner becomes aware of anyone afflicted with “any disease or sickness dangerous to the public health,” the commissioner was mandated, “whenever in his judgment it is safe, expedient and practicable,” to have that individual removed and kept in isolation. A state law indicated that “in case of question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the health officer shall prevail” until the state board of health is consulted, and that the opinion of the state board of health “shall be final” and that the state board of health had the final authority to designate the meaning of dangerous and infectious diseases.*

*In April 1918, Francis Williams was arrested as a disorderly person, examined by the city health commissioner, and committed to an isolation hospital for being afflicted with syphilis. He appealed to the state board of health, which affirmed the city commissioner. He petitioned for a writ of habeas corpus from the county court, contending that he was being unlawfully detained and was not in fact afflicted with a contagious disease. The county judge ordered that Williams be reexamined by an independent doctor, but the health commissioner appealed to the state supreme court to block further proceedings. The state supreme court unanimously sided with the health commissioner and ended any further judicial investigation of the basis for detaining Williams. The court emphasized that the legislature was entitled to broad deference in making laws for protecting public health, that the legislature could authorize designated medical professionals to have the final word on matters of fact pertaining to public health, and that such laws did not unconstitutionally delegate legislative power to an executive officer.*

Judge [CHADWICK](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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. . . . This then is the controlling question: Whether the Legislature has power to create a board of health and make its rulings final and conclusive when called in question in a court of general jurisdiction.

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“And in respect of personal rights every citizen is bound to conform his conduct and the pursuit of his calling to such general rules as are adopted by society, from time to time, for the common welfare.” Leroy Parker and Robert H. Worthington, *The Law of Public Health and Safety* (1892). . . .

And since *Barbier v. Connelly* (1885), it has been held that the limitations of the fourteenth amendment were not intended to interfere with the exercise of the policy power on the part of the state. . . .

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In testing the reasonableness of an ordinance or legislative conduct sounding in the police power, the courts have not been inclined to go beyond the query whether the subject-matter of the act is within the range of its authority, and having so determined they will not revise, correct, or nullify the methods and means employed to accomplish the purpose of the law.

That the preservation of the public health is a proper subject for the exercise of the police power goes without saying; indeed, it is the first concern of the state. “The tendency of judicial and public opinion to translate the maxim, *salus populi suprema lex*; the public health is the highest law; and whenever a police regulation is reasonably demonstrated to be a promoter of public health, all constitutionally guaranteed rights must give way, to be sacrificed without compensation to the owner.” Christopher G. Tiedeman, *A Treatise on State and Federal Control of Persons and Property in the United States* (1900).

Indeed, it may be said that, where the police power is set in motion in its proper sphere, the courts have no jurisdiction to stay the arm of the legislative branch of the government, for it is operating in its own particular field, where even the courts are powerless to insist upon a procedure consistent with the forms of the common law.

Some courts have held that the discretion and judgment of administrative officers, while very broad, is not absolutely and in all cases beyond judicial control, but the tendency is away from this doctrine; for, granting the right to question means and methods in one case, the questions of fact upon which the administrative order is based might be raised in every case, and the object of the law, which is to deal summarily to the end that imminent peril to the public may be averted, would be wholly overcome. At any rate, a somewhat extended exploration of the books convinces the writer that a court should not inquire into the reasonableness of an ordinance sounding in the police power in any case where the legislative body has provided the means and methods of carrying it out.

That a city council may pass ordinances under its general powers to promote and preserve the public health, even to the extent of doing that which would be rejected as unreasonable if passed under its authority to legislate with reference to corporate affairs, is affirmed, as we read the text, by Judge Dillon: “In other words, what the Legislature distinctly says may be done cannot be set aside by the courts because they may deem it to be unreasonable or against sound policy. But where the power to legislate on a given subject is conferred, and the mode of its exercise is not prescribed, then the ordinance passed in pursuance thereof must be a reasonable exercise of the power, or it will be pronounced invalid.” John F. Dillon, *The Law of Municipal Corporations* (1873).

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The federal government has in the exercise of its sovereignty and for many years assumed to hold immigrants for examination and possible quarantine. Under the federal statutes and the regulation of the department the executive officers are given a discretionary power to determine the right of an immigrant to land. There may be an appeal to the secretary having charge of immigration affairs. It is provided that his decision shall be final. *Ekiu v. United States* (1892).

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It would seem that the analogy of these cases is complete; but, if it be not so, it would appear that we have held in principle as we are now holding. In *Davison v. Walla Walla* (WA 1909), we held that things done under the police power may be done without resort to judicial proceedings, and in *State v. Somerville* (WA 1912), we said: “Many courts have held that a large discretion is necessarily vested in the Legislature when exercising that power, and that the Legislature may determine, not only what the public interest demands, but also what measures are requisite and necessary to secure and protect the same.”

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We are unable to draw a line that would logically differentiate this case from the principle involved in those cases where the courts have sustained findings of medical and dental boards. If it is within the power of the Legislature to provide for the licensing of all those who are skilled in the profession devoted to the health of the people and to lodge the determination of their qualifications in a board of professional men, it ought to follow that the Legislature could provide by a similar law for taking the judgment of men havingthe same skill upon a question of fact as to the existence of, or whether a given person was, or is, afflicted with a contagious, dangerous or infectious disease. The right is sustained because the act of such board is in no sense judicial. *State v. Bonham* (WA 1916). . . .

The sustaining grace of the police power being in its inceptions and general application rather than in its consequences as applied to individual cases, we hold that the ordinances of the city of Seattle and the state law are founded in sound reason.

It is finally contended that the law is unconstitutional, in that it delegates legislative power to the health boards, in that it leaves to them definitions and classifications of diseases.

This court has not heretofore considered similar laws as a delegation of legislative power or authority. The legislation is that of the legislative body, but it is not always practical to meet every phase of the necessity that has called for the law by the enactment of a general statute. The Legislature may well have taken notice of the fact that the nature, virulency, and extent of territory covered by contagious and infectious diseases, whether endemic or epidemic, are all factors to be considered in the matter of quarantine, and that, after all, the whole working of a plan for quarantine must depend upon the judgment and discretion of men learned in the science of medicine, and that doctors sometimes disagree. The Legislature, as well as the courts, would be helpless, in such matters without resort to expert opinion, and their judgments would necessarily lie in greater or less degree in the facility of witnesses and the skill of counsel. It is most likely that the Legislature sought to avoid the confusions and delays that must necessarily follow if arbitrary classifications were attempted in the statute, for if it had the power to say, in emergency (in self-defense), that, inasmuch as the whole matter of quarantine must rest ultimately in the judgment of medical men, it could avoid the danger of partisan opinion and fix the seat of that judgment in men of its own choosing, or to be chosen in a way provided, and who being bound by oath to perform a public duty, and having a due sense of responsibility presumably would discharge their office with justice and fidelity.

We may well adopt the language of the court in another case:

“Because the state has, as in this instance, determined upon and specified the officers upon whose judgment on the questions submitted to them the state is willing to rely. Taking the case at bar for an example, if a record of the examination had been produced in court, with the questions, answers, and credits given to each question, who would determine whether or not a particular answer had received a sufficient credit? Certainly not the jury, for they are not presumably competent to pass a proper judgment on such subjects. Not the judge, for his qualifications do not embrace, or at least require, an expert knowledge of the science of dentistry. Expert witnesses could not be properly permitted to testify, for the reason that the state has already designated and empowered experts to pass upon these questions, presumably by reason of their recognized qualifications.” *State ex rel. Brown v. Board of Dental Examiners* (WA 1903).

We must credit the Legislature with a consideration of these things. . . .

The rule being that health laws shall be liberally construed, the power of the legislative branch of the government is not to be lightly interfered with or set aside. Courts will not seek for an opportunity to declare a right of appeal or review in cases resting in public necessity.

We find, as the Supreme Court of New Jersey found in a similar case:

“But upon the general merits of the controversy, we are unable to perceive anything in the legislation referred to conferring upon the common pleas the right to review the conditions and the emergency in the locality which prompted the board of health to impose the restrictions and quarantine complained of in this case. We are unable to perceive any authority in the legislation itself, or in the public policy upon which it is based, which can be said to contemplate the submission to a legal tribunal of the public necessity, which requires in an emergency the prompt and expeditious intervention of a board to which the Legislature for the protection of life and health in a community has especially committed the determination of the facts.” *Board of Health v. Court of Common Pleas* (NJ 1912).

for, as said in that case, to assume to review a finding of a properly constituted officer vested with authority to determine a fact in a critical situation involving detriment to the life and health of a community is tantamount to a declaration that the police power of the city is moribund and useless.

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