*Public health law is a subject which is treated rather infrequently in the public health literature. For this reason we welcome this basic presentation by Dr. Hamlin which we feel will prove useful to many readers of the Journal.*

# PUBLIC HEALTH LAW OR THE INTERRELATIONSHIP OF LAW AND PUBLIC HEALTH ADMINISTRATION

*Robert H. Hamlin, M.D., M.P.H., F.A.P.H.A.*

LAW, itself, is a social science which expresses society's organized planning and self-regulation. It is the system of rules by which a community or series of communities determines (1) the conduct, rights, and powers of its members, (2) its own actions for the members' benefit, and (3) its permissible interference with the freedom of these same members. Any rule answering this description is, if authoritatively promulgated, a law.

The term public health law requires more precise analysis and definition. A generally accepted definition of modern public health itself is that given by Dr. C.-E. A. Winslow who stated:

> "Public health is the science and the art of preventing disease, prolonging life, and promoting physical health and efficiency 'through organized community efforts' for the sanitation of the environment, the control of community infections, the organization of medical and nursing services for the early diagnosis and preventive treatment of disease, and 'the development of the social machinery' which will ensure to each individual a standard of living adequate for the maintenance of health; 'organizing these benefits' in such a fashion as to enable every citizen to realize his birthright of health and longevity."

The terms "through organized community efforts," "the development of the social machinery," and "organizing these benefits" are quoted here to emphasize those activities in public health in which the law and its understanding are of vital importance. It is the law which provides one of the major mechanisms by which the objectives of public health may be realized.

From this explanation it may be more clearly understood that the term "public health law" expresses the application of general legal principles to the practice of public health. Public health law is not a separate, distinct series of legal principles different from those applied to other professions or interests. It is the subject matter—public health—to which the principles are applied that is special. The same general legal principles will pertain to many other areas of social action and activity.

## Classification: Types and Sources of Law

### Types of Law

Types of law may be classified in several ways. Unfortunately, many of the classifications overlap, are incomplete and incomprehensible, or do not permit the public health worker to apply the classification to his own duties in a practical manner.

In order to best illustrate the interrelationship of the types of law to their sources of authority, the following classification of the general types of law is used:

1. Constitutional law
2. Statute law
3. Administrative law
4. Common law

Constitutional law describes generally the plan and method by which the public affairs of government—federal, state and local—are to be administered. More specifically, it is concerned with the organizational plan of government, the powers of sovereignty, the distribution of political and governmental authority and functions, and the fundamental principles which regulate the relations of the government and the people. A constitution is the enumeration of these accepted principles in a written document or their establishment by usage formally recognized.

Statute law, or "written" law, is law created under constitutional authority by the enactment of legislative bodies whether federal, state, or local. These enactments are called "statutes" on the federal and state levels of government, but most frequently "ordinances," "codes," or "by-laws" in local government. Thus, a constitution is the organic law of a state or the nation, the adoption of which by the people constitutes the political organization, as distinguished from statutes made by legislative bodies acting under the authority of the constitution.

Administrative law is law authorized by the appropriate legislative body and subsequently created by the various subdivisions of government (such as official health agencies) prescribing in detail the procedure and content of the subdivisions' programs and activities. These enactments of the governmental subdivisions are called, variously, "rules," "regulations," and "orders." They have the effect of law.

Common law, or "unwritten" law, is law based on social policies, usages, and customs which have been recognized, affirmed, and enforced under constitutional authority by the courts. The determinations by the courts establishing the common law are known most commonly as court "decisions," "judgments," "decrees," and "orders."

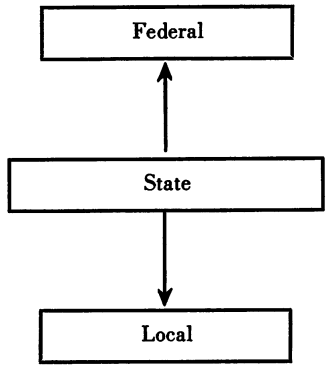
### Sources of Law

To understand the sources of law (as against the previously discussed types of law) both a vertical and horizontal analysis must be made of our political or governmental organization.

Vertical Organization of Government —Vertically, government is organized in descending fashion in the following levels:

1. International
2. Federal
3. Regional (among several states)
4. State
5. Regional (among several localities)
6. Local

This descending order—descending order in size but not necessarily in respective power and authority—is often simplified into the following three levels: federal, state, and local. Their respective powers may be diagramed as follows:




Historically, the authority of the federal and local governments has derived from the states. The federal government has only those powers originally granted

by the states and embodied in the federal constitution; all other powers are left to the states. Localities, in turn, presently have only those authorities delegated to them over a period of years by the state constitutions and the state legislative bodies.

The "police power" is the inherent authority conferred by the American constitutional system upon the individual states through which the states may regulate whatever affects the peace, good order, morals, and health of the community. This authority or power is broad in scope (much more than most public health personnel realize) and is generally indefinable in its limitations. It is limited only by the powers conferred in the federal constitution and the general federal and state constitutional guarantees such as due process of law, equal opportunity, freedom of speech and religion, and so on.

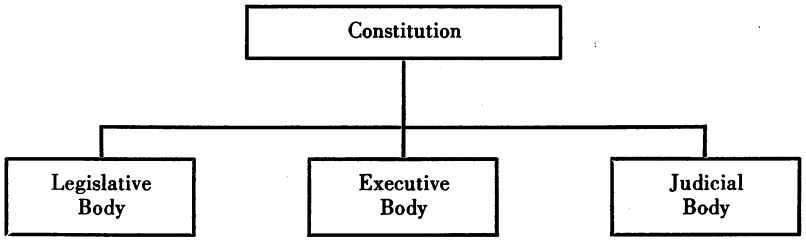
The question as to what are the proper limits of the state police power in a specific situation is a judicial one. In a long and fluctuating line of decisions by our courts it has been held to include quarantine restrictions, fire and building requirements, draining marshes, licensing of various activities such as slaughter houses and restaurants, exclusion of paupers and immigrants, caring for the indigent, regulating numerous activities such as highways and peddlers within the state, prohibition and abatement of nuisances, right of entry into premises for inspection purposes, control of the sale of adulterated and simulated food products, regulation and reporting of communicable diseases, and provision of medical care.

The powers of the federal government to act in health and welfare matters are direct and indirect. Direct powers permit specific acts by federal agencies and their personnel, such as building and operation of hospitals for veterans, merchant seamen, Indians, and so forth; quarantine restrictions for persons and products in foreign and interstate commerce; control of materials transported through the postal system; and provision of medical services for military personnel and their dependents. The major indirect federal powers are exercised through the fiscal power to tax for the general welfare of the people. The best working examples are the numerous grant-in-aid programs (in tuberculosis, crippled children, water pollution, roads, housing, etc.) in which the federal government through its greater taxing ability provides funds on a voluntary basis to states which, to qualify, must meet certain federally created standards.

The powers of our local governments in health and welfare services vary considerably from state to state depending upon the past and present delegation of state powers by the individual states through their state constitutions and the periodic acts of their legislative bodies. It is impossible to generalize on the local authority for self-determination. The presence of "home rule"—or the lack of it—is a description of the degree of willingness of a state to delegate the right to self-rule to a local government.

Horizontal Organization of Government—On each of the previously discussed vertical levels of government there are three general horizontal branches: legislative, executive, and judicial. This is shown in the next diagram.

The interrelationship of these three branches of government is determined by the separation or balance of powers doctrine basically defined from the distribution of authority in the constitution (or charter in case of a locality). The body that deliberates and enacts laws is legislative; the body that judges or determines the application of the laws to particular cases, their constitutionality, etc., is judicial; the person, or body of persons, who carries the laws




into effect, or superintends their enforcement, is executive (a health agency is part of the executive branch). On the federal level of government, these bodies are respectively the two houses of Congress, the Supreme Court and its lower courts, and the President and officials subordinate to him; on the state level the same respective bodies are the state legislature, the state supreme court and its lower courts, and the governor with his subsidiary personnel; on the local level, the city council or county commissioners (or other possible names for the legislative body), the local courts, and the mayor (or other possible individuals or groups with the executive power). The health agency, regardless of the level of government, is always a part of the executive branch.

## Lawmaking by Official Health Agencies

The source of the legal authority of an official health agency stems from its position as a part of the executive branch of the government. As such, the general legal powers of a health agency are as follows:

1. Quasi-legislative (the authority to make rules, regulations, and orders).
2. Quasi-judicial (the right to hold hearings and to revoke or suspend licenses, etc.).
3. Executive or administrative (the mandate to plan, develop, and operate programs, etc.).
4. Investigative (the right to make inspections, etc.).
5. Educational (the authority to undertake general education of the public, personnel training, etc.).

These powers are not inherent in a health agency. The general authority within which each act or program of an agency is performed must have been previously granted by the legislative body.

As among constitutional, statutory, administrative, and common law, it is administrative law with its authority to make rules and regulations which should be the primary concern of public health workers. Constitutional law, statutes, and common law as interpreted by the courts must be considered since it must be within their authority that the health agency may act in developing its programs and rules and regulations. Nevertheless, the preparation and supervision of rules and regulations in health matters is primarily the responsibility of public health workers, while the interpretation of the other types of law (constitutional, statutory, and common) belongs to the lawyer who will define the permissible scope within which the health agency may operate its programs and make its rules and regulations.

Health agencies to the fullest extent possible should therefore define and develop their programs under general statutes of the legislature which in turn delegate to the agency itself a power to make the rules and regulations defining the more specific program procedures and content. As a corollary, the specific substance of a program should not be embodied in statutes and local ordinances enacted by legislative bodies. Flexibility to adapt to changing pro-

gram needs and the utilization of the public health worker's professional expertise will be greatly diminished if only statutes and ordinances are utilized without relegation to rules and regulations.

## Conclusion

Law as it relates to public health is concerned with education, programing, services, and their organization and performance. It is therefore part of the daily life of the public health worker. It is not to be utilized only sporadically when difficulties are encountered.

The law is a resource which must be used with all other resources such as health education, trained personnel, adequate facilities, and sufficient funds to accomplish the proper organization and operation of our health programs. An appeal to our legal system is often a prerequisite action to obtaining these other resources.

For these reasons, it is necessary that public health workers have a framework of understanding within which they may recognize, analyze, and understand their specific legal powers and problems.

Dr. Hamlin is associate professor of public health administration, Harvard School of Public Health, Boston, Mass.

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