

10-03-14 Nuisances Then and Now

The early colonies of what would become the United States of America adopted, out of necessity, rules and regulations to protect the health and welfare of its citizens. They had to. They were facing plagues and epidemics if someone did not step up and come up with a plan to protect people. In the early days, several hundred years ago, this was called police power. That phrase does not roll easily off my tongue but age and maturation and experience have proved to me the necessity of police power. It still exists for Boards of Health. It is a necessity but it must be wielded with a sense of justice and with reason and good cause. In fact, I am reminded, once again, how applicable and comparable raising children is to being a health agent. There are reasons for rules and there are consequences when we don't follow them.

The consequences for public health situations are not only fines, proclamations and court orders. Consequences included then, as now, injury, disease and death. It was these very consequences that our forefathers wanted to prevent by continuing that police power to the all the states, via the Constitution. If that power was questioned, it was shortly thereafter answered by the public health response to the yellow fever epidemic of 1793. People were suddenly grateful for public health police power. That is the origin of what continues to be viewed by the courts as the very broad authority given directly to Boards of Health to deal with threats to public health.

Now, I know that according to today's way of thinking, a threat to public health does not include the word "nuisance". That is what we think of when someone or something is simply very annoying. A simple annoyance is not what Paul Revere was talking about when, as the first chairman of the first Board of Health in Massachusetts, he foresaw the eventuality of Massachusetts General Law chapter 111, section 122. That law does not just suggest or recommend that nuisances be dealt with; it demands it. Boards of Health have the authority and the responsibility under c. 111§122-131 to clear, clean, abate or condemn nuisances. The Agent of the Board of Health is authorized to act for the Board under M.G.L. c. 111 §30. That's me. Rather, that is I. As the agent, I am authorized to act for the board and let me tell you, it is not easy.

Nuisances can be a nuisance in the modern sense but when responded to with patience and professionalism and reasonableness and, most of all, weighing out those potential health and safety consequences, those cases are seen, time and again, as important in the sense Paul Revere had in mind. We might be preventing the spread of disease or we might prevent a child being crushed with the weight of a collapsing pile of stumps and logs. The details may vary. Taking it seriously enough to investigate does not.

Once the investigation begins, the goal is health and safety. Then I pray. "Oh, Sweet Lord, please let people actually care and speak honestly and agree to a plan of action."

When my prayer is answered, it is so refreshing! What is reasonable? What can be done within a certain timeframe? Okay, we have a plan. Let's agree to it and put it in writing.

Then, there are other times when people don't tell the truth or they don't follow through. Maybe more chances and more time are given; it depends on the situation. Who is at risk? What is the danger? If there is an imminent health threat, well, we can't dawdle. We need action.

And that is why Paul Revere limited our choices: we must clear, clean, abate or condemn nuisances.

Is there a public health nuisance near you? Call your local board of health and ask for records pertaining to the address or situation. No records? Well, you can begin one. You might be surprised and you might find yourself a deputy of sorts in that police power of Boards of Health. We need your knowledge. Then we can investigate and act on what is confirmed.

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