

8-10-12 Power to Do the Right Thing

Boards of health were given an incredible degree of authority from the start because of the seriousness and weight of their responsibilities. It is their charge to protect the public and the environment and sometimes that responsibility of protecting the many requires the very opposite of what we are accustomed to in this country. We are accustomed to upholding and protecting the freedom and rights of the individual. During public health emergencies, the rights of the individual may be secondary to the needs of many. The best example of this scenario is when a contagious illness requires boards of health to issue orders of Isolation and Quarantine. (A way to remember the difference is to keep in mind that the ill person is isolated (the letter “I”). Then the others, who may have been exposed, are quarantined in order to prevent further spread of the disease.)

In emergencies such as isolation and quarantine orders, boards of health may exercise their given police powers. That’s right: police powers. It sounds so militaristic, doesn’t it? It is a heavy charge and it would be a shame to misuse or abuse it, for this power is needed at times, to support some very necessary decisions and actions.

The authority is clearly stated that boards of health may adopt and enforce reasonable regulations (M.G.L. c.111, s.31) and may also issue orders and take necessary actions, as deemed necessary, in response to emergencies [State Sanitary Code, Chapter I, 105 CMR 400.200(B), pursuant to M.G.L. c.111, s.127A; and State Environmental Code, Title I, 310 CMR 11.05(1) and 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)].

Having police powers does not make us the police, though, does it? We might need the assistance of the Police Department in order to safely carry out our inspections, decisions and orders. And that assistance is welcome, indeed!

It has been my experience in my brief twelve years as a health agent, that the authority and police power is there for good reason and that good comes of it, despite the initial obstacles and heart wrenching situations accompanying these circumstances. Illnesses are prevented by ending pollution. Children are able to move into safer, healthier living conditions. A young mother is given another chance in a better place. An elderly person’s life is saved and he is allowed to live in dignity.

A widespread contagious disease is not required for the declaration of an emergency or the need for emergency response; even housing conditions can result in conditions of imminent threat requiring boards of health to exercise their police power. The conditions can be so unsafe, and/or so unsanitary that the building can be declared unfit for human habitation. (See 105 CMR 410.831: Dwellings Unfit for Human Habitation; Hearing; Condemnation; Order to Vacate) Part of that housing code refers to the septic system and when the homeowner fails to provide and

maintain a sanitary drainage system, the result is considered to be a “Condition(s) Deemed to Endanger or Impair Health or Safety” (410.750).

Properly working plumbing leading to a safe and functioning drainage/leaching system are more than a convenience and the failure of such systems constitutes more than nuisance odors. Methane gas can kill by replacing oxygen and causing asphyxiation. E.coli bacteria, along with shed viruses, backing up into tubs or bubbling up out of the ground can lead to gastrointestinal diseases. In young children, gastrointestinal disease can be deadly, killing them with dehydration or leading to kidney failure. Ordinarily, the goal would be to assist the owners to repair the failed septic system. Sometimes, though, the occupants are no longer the owners of the home but biding their time with a foreclosure. In those cases, other problems begin to literally pile up as well.

When the situation worsens, it is not only the occupants of the condemned property who are placed in danger; the trash and garbage attracting animals, debris such as mattresses providing harborage for rodents and insects, garbage and effluent breeding flies and wastewater flowing on the ground and/or into groundwater where there are drinking wells, all result in a cumulative effect endangering the health, safety and well-being of their neighbors as well.

Our forefathers were brilliant thinkers, planners and writers. They had the wisdom to know that people and the environment needed protection, they set the goals of minimum standards, leaving stricter ones to local and future people and they provided for the authority to carry out our duties. They even provided the police power, knowing that there were times when individual rights would need to be secondary to the health and safety of many, after giving those individuals the offering of a hearing and a chance to correct the wrongs. When individuals do not make those corrections, stepping in to secure and make a situation safe is the right thing to do.

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