

Independence Is Not Synonymous with Disregard for Others

An attorney once wrote to me asking for an explanation and defense of my enforcement actions in a particular case that had to do with prevention of water pollution. My response to him, in part, was as follows:

“Local boards of health in Massachusetts have historically played a crucial role in the protection of public health, promotion of sanitary living conditions and the protection of the environment. In recognition of the importance of local leadership and action in these areas, the legislature has over the years enacted numerous statutes which authorize and thereby encourage the local boards to be responsible for dealing with a broad range of health, sanitation and environmental problems at the local level. While there is no specific definition of the State’s police powers, the courts have historically found two basic purposes that justify a State’s action with regard to public health: actions for the protection of a given individual and actions for the protection of society at large. It is a widely accepted function of government to protect the health of society, even at the expense of the individual’s freedom. Local public health departments and agencies derive their authority primarily through explicit and specific delegation of power from the State legislature, in particular, from M.G.L. c. 111 § 31, boards of health may make reasonable health regulations. Also, M.G.L. c. 111 § 188 allows for the disposition of fines and forfeitures. In addition, local boards of health possess enforcement powers for emergency situations. Regulations such as 105 CMR 400.000 (Chapter I of the Sanitary Code) and 310 CMR 11.00 (Title I of the Environment Code) grant local boards of health the authority, in accordance with the provisions of M.G.L. c. 111 § 30, to dispense with ordinary enforcement procedures in the interest of protecting the public health in emergency situations. Boards of health have the authority and the responsibility under chapter 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. In addition, M.G.L. c. 40 § 21D is the statute authorizing town boards and officials to issue non-criminal fines for violations of town bylaws and regulations.”

While all those legal references may sound to some people like power and independence, my ears hear the concepts of dependence and responsibility. We are dependent on so many others for guidance and assistance. I could not write a letter like the one I just quoted without help from agencies such as MAHB (Massachusetts Association of Health Boards), MA DEP (Massachusetts Department of Environmental Protection), MHOA (Mass. Health Officers Association), MA DPH (Mass. Dept. of Public Health), to name just a few. We are dependent on conducting ourselves in a caring, professional and legal manner. For instance, if we want to make use of so-called 21-D tickets, our town should adopt the use of them. If we want to enforce our own local regulations, they had better be adopted with the correct procedures. We are allowed to adopt regulations that are stricter than the State’s but never more lenient. It is certainly a “Best Practice” to advertise and hold hearings so that we can be fully informed. When it comes to Title V, it is a necessity to post a hearing for any changes at least 14 days prior to the public hearing. When new regulations are adopted, we must advertise a brief summary and send a signed copy to the appropriate overseeing agency. Local regulations supplemental to Title V are sent to DEP so that they can be enforced, if challenged.

The powers and the authority of a board of health are in place to protect the public. We use only as much as a situation requires. Almost always there is time for advertisement, for notice of intent, for collecting feedback.

Boards of health do not have the authority to do whatever they want. We cannot violate someone's civil rights, unless it is a dire emergency. When access to a home is needed but not granted by the tenant or homeowner, we can seek an administrative search warrant. Even with the warrant in hand, we still cannot enter without permission. We would have to go back to the court and ask for a judgment of contempt of court and would also have to decide if the conditions are so deplorable that the house has to be condemned. Once the proper procedure for condemning a house has been followed, the board can order the occupants to vacate and can ask for the assistance of the police in vacating the occupants.

Again, my ears hear concern and responsibility. We are given the legislative power to act independently, as a board, so that we are not impeded when it comes to public safety. However, we are also required to determine and document the need for our actions and to act responsibly and legally.

Our dependence on laws and our duty to others is on my mind as we celebrate our country's Day of Independence. Happy Fourth of July!

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