ADDENDUM TO RESPONDENTS' BRIEF

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*Respondents' copy of Appellant's addendum to its brief did not include page 1 of the District Court's decision in the underlying case, and Respondents include it in their addendum here in the event it was also inadvertently omitted from the Court's copy.

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

In re: the Application for an Administrative Search Warrant,

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

City of Golden Valley, Petitioner

Court File No. 27-CV-15-15657

The above-entitled matter came on for hearing before the Honorable Susan M. Robiner on September 17, 2015 upon Petitioner's application for an administrative search warrant. Ashleigh M. Lietsch, Esq. appeared on behalf of the City of Golden Valley, Minnesota. The subjects of the warrant, Landlords Jason and Jacki Wiebesick ("Landlords" or "Wiebesicks") and Tenants Tiffani Simons and Jessee Treseler ("Tenants") did not appear. Based upon all filings and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. The City of Golden Valley ("City") has a city code that establishes standards for rental housing and requires rental licenses for all rental dwellings in Golden Valley. Golden Valley City Code, § 6.29. The code contains minimum standards for structural integrity, ventilation, water heaters, fireplaces, lighting and electrical systems, smoke detectors, and other systems. These standards operate to protect residents from the risks to life and property posed by noncompliance.

2. The ordinance purports to allow the City to inspect all rental dwellings to ensure compliance with the City Code and state law. It states that "The Code Official shall determine

NO. A10-0332

State of Minnesota

In Supreme Court

Robert McCaughtry, *et al.*,

Appellants,

v.

City of Red Wing,

Respondent.

BRIEF AND APPENDIX OF *AMICUS CURIAE* WIEBESICK RENTAL

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Introduction[1]

"That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed." THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

Ordinary, law-abiding citizens all over the state of Minnesota still believe the Declaration of Independence, the U.S. Constitution, and the Minnesota State Constitution serve to protect them from unwarranted government intrusion into their lives and property. These hardworking citizens believe their government needs to have justification before barging into their most private space: their homes. The rights of property owners and renters at stake in this case are not limited to those in the City of Red Wing, as many cities across the state are implementing similar licensing and inspection regimes based solely on generalized requirements to inspect all rental property within their jurisdiction. *See generally* Survey of Top Minnesota Cities for Rental Housing Licensing and Inspection Programs (Appellants' App. 124). These supposedly purely administrative regimes are anything but benign when paired with the might of law enforcement, fines and threat of criminal sanctions for noncompliance. This modus operandi of city officials forcing their way into private residences when the tenants and landlords resist the intrusion is a far cry from the ideal that city government

[1] Nicole L. Concordia, counsel for *amicus curiae* Wiebesick Rental, certifies counsel authored this brief in whole, with no monetary contributions whatsoever.

should be working for the benefit of its citizens by protecting their rights. *Amicus curiae* Wiebesick Rental (Wiebesick) believes the city of Golden Valley (City) should spend its resources on remedying actual problem properties and leave alone the properties with zero tenant complaints and no obvious violations of the Golden Valley Residential Property Maintenance Code (RPMC). Therefore, Wiebesick urges this Court to remind cities to treat their citizens with dignity and respect by interpreting Article I Section 10 of the Minnesota Constitution to require individualized probable cause for administrative warrants authorizing inspections of rental property.

Statement of the Case and Facts

Wiebesick concurs with Appellants' Statement of the Case and Facts and adopts and incorporates the facts set forth in the Brief of Appellants and the Appendix to Brief of Appellants.

Additionally, by Order of September 10, 2012, the Minnesota Supreme Court allowed Wiebesick Rental to participate as *amicus curiae* in this case to describe its experience objecting to an inspection of its property upon non-individualized probable cause under Golden Valley's rental licensing inspection regime.

Statement of *Amicus Curiae* Facts

Jason Wiebesick, principal of Wiebesick Rental, purchased a duplex in Golden Valley in 1986. After completing moderate renovations, the unit

located at 510 Jersey Avenue North has seen a steady string of tenants renting the property. Jason performs regular maintenance of the property and personally completes renovations to ensure the work is done with quality materials and meticulous attention to detail and compliance with housing standards. Many of Wiebesick's tenants only leave the property when they are ready to purchase a home of their own. For 25 years, Wiebesick maintained a quality rental unit with zero complaints from its tenants.

In 2007, Golden Valley adopted a licensing and inspection system in its Residential Property Maintenance Code (RPMC) requiring all rental units in the City to be licensed and submit to an intrusive inspection of the rental property whenever the City Manager feels like it. Golden Valley Residential Property Maintenance Code § 4.60 subd. 9 (2007) (APP1-18). The stated purpose of the inspections is to "determine whether the property is in compliance with the City Code, the standards contained in this Section and the laws of the State of Minnesota." *Id.* Such a broad inspection necessarily touches every space within a rental unit, since, for example, inspectors would need to verify that a unit provides one electrical outlet for every sixty square feet of floor area. *Id.* at § 4.60 subd. 8(D)(2) (APP10).

Wiebesick became aware the City intended to apply this new rental licensing requirement to its property when it received a letter from the City, dated June 29, 2011. APP19. This one page letter purported to be a Second

Notice, referenced the existence but not the content of the earlier letter from June 8, 2011, and simply stated Wiebesick must submit a rental application and fee by July 15, 2011, or face fines. *Id.* The letter did not even reference the City Code provision authorizing the rental license. *Id.*

Perplexed by this new licensing requirement, Wiebesick sent a response letter to Mr. Kunde (Kunde), the author of the City's letter and Fire/Property Maintenance Specialist, on July 1, 2011, requesting an explanation of the City's authority to require a rental license for private property being rented to a private individual. APP20-21. Wiebesick did not receive any response from Kunde or the City to its inquiry. Instead, Wiebesick received a citation, signed by Kunde, for "Failure to License Rental Property," which carried a $100 fine and a notice that possible criminal prosecution could ensue. APP22-24. This citation, along with the envelope it was mailed in, erroneously listed the mailing address as "PO Box 27681," instead of "PO Box 27618" as listed in Wiebesick's July 1 letter. *Compare id*, with APP20.

Wiebesick then wrote a complaint letter to the City Manager, Mr. Burt, criticizing Kunde's unresponsiveness and detailing the impact of that lack of communication; namely, the $100 fine, the potential $25 fee to appeal the fine and potential for criminal prosecution. APP25-26. In the Complaint Wiebesick again requested help understanding this new licensing

requirement. *Id.* And again Wiebesick's request was met with silence from the City.

On September 26, 2011, having received no response, Wiebesick submitted a letter to the City refusing the citation, requesting the citation be put on hold until someone finally responds and also requesting a meeting. APP27. Having no legal training, the format for this letter was inspired by information Jason Wiebesick found online. Frustrated at this point, but still believing in local government's role to support its citizens, Wiebesick remained hopeful that it could work out these issues without involving lawyers. With that in mind, Wiebesick went to City Hall on September 26, 2011, and met with Chief Mark Kuhnly, Kunde's supervisor. Wiebesick explained the situation and again requested the citation be placed on hold while they worked out the details. Wiebesick understood Chief Kuhnly to agree to place the citation on hold while he investigated further. Instead, the very next day, September 27, 2011, Wiebesick was issued a second citation for an additional $250. APP28-29. Wiebesick again went back to City Hall to talk with Chief Kuhnly, but this time was told a formal appeal would need to be filed for $25.

After this second citation, Wiebesick finally received a cursory response to its many inquiries about where the City derived its authority to implement its rental licensing program in a September 30, 2011 letter from attorney

Allen Barnard. APP30-31. The less than two-page letter cited a Colorado Supreme Court decision about the tenth amendment to the U.S. Constitution, and a brief example of a U.S. Eighth Circuit Court of Appeals decision, neither of which provided a clear delineation for a layperson to understand the link between federal and state constitutions and the City's ability to tell private persons what can and cannot be done on their own property. *Id.*

Wiebesick filed an Appeal on October 6, 2011, which detailed three main complaints about the rental licensing requirement: 1) the inspection without individualized probable cause would be an invasion of privacy for both tenants and owners residing at the property; 2) there are no standards for how the inspection is to be performed; and 3) there are no safeguards in place to ensure information the inspector obtains will be kept confidential, especially from law enforcement. APP32-34. At the appeal hearing on November 1, 2011, Wiebesick read the appeal document to the City Council and was met with what appeared to be hostility when the first question asked was 'where were you when the City was contemplating the rental license code?' Wiebesick finally received a response to the inquiry on the authority of the City to require the rental license when the City told him it didn't believe the requirement to be unconstitutional and it was too costly to do the complete judicial review that Wiebesick had been requesting. Wiebesick

pleaded inability to pay the fines, and as a result the City reduced the total amount owed from $350 to $200.

Not satisfied that the City was justified in requiring a rental license and subsequent inspection, with the threat of criminal prosecution looming Wiebesick nevertheless complied with the request to submit a rental application on November 9, 2011, along with the $100 application fee and a letter stating owners and renters objected to the inspection requirement and would not allow an inspection without a warrant. APP35-38. The City issued Wiebesick a rental license on November 14, 2011, and mailed said license with a letter stating an inspection must be scheduled within 30 days. APP39-43. Having objected to the inspection at the time the rental application was submitted, Wiebesick expected the City to seek a warrant for the inspection. Instead, Wiebesick was given another citation on December 27, 2011, and fined $100 for failure to schedule the inspection of rental property under "City Code 4.60, Subdivision 9." APP44-47. But there is no language in the city code requiring the property owner to schedule the inspection. *See* RPMC § 4.60 subd. 9(A) (APP10).

Wiebesick appealed this third citation on January 4, 2012, on the grounds that 1) Wiebesick invoked its right to have a warrant issued prior to inspection on November 1, 2011, and this citation is equivalent to retaliation for invoking constitutional rights, 2) the city code referenced does not require

the property owner to schedule the inspection, nor does it allow the remedy of a fine for failure to schedule an inspection but rather to obtain a warrant, and 3) the pending case of *McCaughtry v. City of Red Wing* may render this issue moot. APP48-52. Another $25 check accompanied this second appeal. *Id.*

Wiebesick expected notification of another appeal hearing, but instead received a call from the new Mayor, Shep Harris, on Saturday, February 4, 2012. Mayor Harris informed Wiebesick that he wished to understand the background of the appeal before the hearing scheduled for Monday, February 6, 2012. On Monday, February 6, 2012, Wiebesick called Mr. Burt at the City offices, and followed the phone call with an email, requesting the hearing be rescheduled, and also pointing out that under the City Code Wiebesick was entitled to five business days' notice of the hearing, and moreover, the hearing should have been scheduled within thirty days of the appeal. APP53; *see* RPMC § 4.6, subd. 12(B) (APP17). Since no notice of the hearing was given, the five day notice requirement was not met, and would mean that the hearing could not be scheduled within the thirty day window. For these reasons the City dismissed the citation. APP54. On February 15, 2012, Wiebesick requested a refund of the appeal fee. APP55. A refund check was later issued.

In yet another example of the City being unable to follow its own code, Wiebesick received a notice from March 20, 2012, stating the 2011 license would expire on May 1, 2012, and a renewal application was due by April 13, 2012. APP56. The RPMC specifies that rental licenses "shall be issued annually and shall expire on the last day of February of the following year." RPMC § 4.6 subd. 9(A) (APP10).

Wiebesick submitted the renewal application on April 12, 2012, along with the $125 license fee. APP57-59. Wiebesick's next communication from the City came on April 24, 2012, when served with the Hennepin County District Court Order Authorizing Inspection, a "courtesy" copy of the Petition submitted to obtain the Order and a date for the ordered inspection of April 26, 2012. APP60-64. Having no notice of the warrant petition, Wiebesick was prevented from speaking on its own behalf to the neutral magistrate making the decision about whether a warrant was justified.

The letter delivered with the Order, identified the date of inspection as just two days later on April 26, 2012. *Id.* Then, on April 26, 2012, instead of an inspection, Wiebesick received another hand-delivered letter stating the inspection would be on April 30, 2012, at 5 p.m. APP65. While the letters were presented within the twenty-four hour notice requirement of the Order for a scheduled inspection, the relatively short notice and last-minute change presented a hardship for Jason Wiebesick to leave early from his full-time job

and to find a baby-sitter for his two children so that his wife, Jacki, could also attend the inspection. Only one of the tenants, whose privacy was at stake, was able to leave their job early to attend the inspection.

At 5 p.m. on April 30, 2012, Jason and Jacki Wiebesick, and Jamal Riley (Tenant) were awaiting the arrival of the City inspector, Kunde. At 6 p.m., an hour after the inspection was scheduled to begin, Kunde approached the property with two armed Golden Valley police officers (Officer #1 and Officer #2). Two more officers remained in their marked vehicles parked on the street. The presence of the armed officers added even more stress to an already tense situation. As Kunde moved through the house he asked Tenant questions about the condition of the property and specific items he was checking. Both Jason and Officer #1 followed Kunde and Tenant through the property, while Jacki and Officer #2 remained in the living room near the front door. Jason asked Officer #2 if it was normal for police officers to attend these inspections. Officer #2 replied that it was normal when a warrant was required. The inspection lasted approximately ten minutes, after which Kunde issued a Correction Notice with "no violations" noted. APP66.

Argument

I. **This Court should interpret Article I Section 10 of the Minnesota Constitution to afford Minnesotans greater protection than the U.S. Supreme Court's decision in Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967), by rejecting the use of**

administrative warrants based solely on generalized probable cause to search the private homes of law-abiding citizens.

A. Other cities' rental property management codes offer even fewer protections to law-abiding citizens than Red Wing's Rental Dwelling Licensing Code and Housing Maintenance Code.

The focus in the case before this Court is on Red Wing's Rental Dwelling Licensing Code (RDLC) and Housing Maintenance Code (HMC). However, the decision of this Court will have a far-reaching impact on similar codes in other Minnesota cities, some of which infringe even further on fundamental liberties than those at issue in Red Wing.

Red Wing's HMC specifically limits what information inspectors gather that may be shared with law enforcement to disclosures required by law, evidence of methamphetamine labs, and mistreatment of minors, vulnerable adults or animals. RDLC § 4.31 subd. 1(3)(q) (Appellants App. 100). Golden Valley's RPMC contains no such limitations on sharing information with police. *See generally* RPMC § 4.60 (APP1-18). For inspections where the police are not present, then, inspectors in Golden Valley are free to share any information they obtain with law enforcement.

Similarly, Red Wing's HMC minimally limits the areas to be searched by specifying that inspectors are "not authorized to open containers, drawers or medicine cabinets," and only allowed to open cabinets or closets when "reasonably necessary" to inspect for the conditions violative of the HMC.

RDLC §§ 4.31 subd. 1(3)(m)-(n) (Appellants App. 99). While these guidelines provide a very narrow set of protections for Red Wing's citizens, Golden Valley identifies no limitations to the scope of its inspections. *See generally* RPMC § 4.60 (APP1-18).

Finally, when a citizen invokes his right to require a warrant before allowing an intrusive inspection, Golden Valley reserves the right to charge the property owner with the costs of obtaining that warrant. RPMC § 4.60 subd. 9(F) (APP12). There is no corresponding provision in Red Wing's HMC. *See generally* RDLC § 4.31 (Appellants App. 96-104).

B. Public policy interests favor setting minimum guidelines for cities enacting rental property licensing and inspection codes to preserve the public's confidence in local government.

As illustrated by Wiebesick's long, harrowing road to protecting its tenants' privacy rights, ordinary citizens are being subjected to onerous requirements under cities' misguided attempts to protect tenants from meticulously maintained rental property. The tactics employed by city officials in the Wiebesick story only serve to undermine the public's confidence in the role and integrity of city officials – from the repeated unresponsiveness to requests for help understanding the new licensing requirements and authority for such, to being unable to follow the terms set forth in its own city code, to filing warrant applications without notice, and creating an environment of general waste of limited government and private

resources. By setting individual probable cause standards for all types of warrants, law-abiding citizens can remain confident their government respects and protects the liberties articulated in Article I Section 10 of the Minnesota Constitution.

Conclusion

For the foregoing reasons, amicus curiae Wiebesick Rental respectfully requests this Court reverse the decision by the Court of Appeals to dismiss Appellants' claims and find that Article I Section 10 of the Minnesota Constitution requires individualized probable cause to be articulated prior to a grant of administrative warrants for rental inspections.

Respectfully submitted,

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Dated: 9/26/12 By: _____

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CERTIFICATE OF COMPLIANCE WITH RULE 132.01

I, Nicole L. Concordia, certify that the Brief of *Amicus Curiae* Wiebesick Rental complies with the length limitation and font size requirements of Rule 132.01, subds. 1 and 3 of the Minnesota Rules of Civil Appellate Procedure. I further certify that, in preparation of this brief, I used Microsoft Word Version 2003, and this word processing program has been applied specifically to include all text, including headings, footnotes and quotations in the following word count, excluding only the caption, signature text and certificates of counsel. I further certify that the above-referenced brief contains 2,884 words.

Dated: 9/24/12 By: Nicole L. Concordia

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THE POLICE POWER

PUBLIC POLICY AND CONSTITUTIONAL RIGHTS

BY

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COLLEGE EDITION

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is common in European cities and cannot be regarded as unreasonable; the measure, however, is in reality one for the regulation of the business of lodging persons for hire, and such regulation cannot be beyond the power of the state. The act provides for a more extensive plan of registration than has been previously attempted under our system of government; but no attempt is made to enforce the law.[12]

INSPECTION. § 47-48.

§ 47. Inspection and search.—The power of inspection is exercised as an incident to regulations for the prevention of disease, accident or fraud. It operates almost exclusively on buildings and machinery or other apparatus, and on articles exposed for sale. The power of inspection is distinguishable from the power to search: the latter is exercised to look for property which is concealed; the former to look at property which is exposed to public view if offered for sale, and in nearly all cases accessible without violation of privacy. Hence inspection does not require affidavit, probable cause or judicial warrant. The right to inspect may be reserved as a condition in granting a license.[13]

The constitutional aspect of inspection is, however, different

[12] *Objections to registration.*—Where the requirement of registration conflicts with custom or sentiment, it is apt to be regarded as extremely odious. No difficulty is felt in insisting upon licenses or ceremonies in the formation of the marriage relation because such publicity is traditional. When, however, a German law recently required as a condition of the validity of dealings in futures that the parties should be entered in an exchange register, there was an almost universal protest, and few persons or firms were found to be willing to comply with the requirement, preferring to take their chances as to the performance of contracts. The demand for the abrogation of this provision is so urgent that the government will probably be unable to resist it. In an ideal state of society, publicity might be no objection, but the police power in such a state would be superfluous. Yet there is nothing in our constitutional law which would prevent the enactment of a similar measure in this country, just as we have laws requiring reports from all corporations. Public sentiment must be relied upon to prevent such legislation or its enforcement. A government cannot be said to be free and liberal in which there is not a considerable margin between the practice of legislation and constitutional limitations; for a government must have powers to exercise in time of emergency which it would be tyranny to use without such necessity.

[13] Schumacher v. New York, 166 N. Y. 103; 59 N. E. 773.

where it is extended to interior arrangements of private houses, or personal property kept therein in private custody. It appears that health authorities often claim the right to enter private houses, to inspect sanitary arrangements, in some cases by express legal authority.[14] So in Chicago the health commissioner is given power to inspect the plumbing and other sanitary arrangements in all houses, while the power of the commissioner of buildings to enter buildings to verify the compliance with the building regulations does not extend to houses used as residences for one or two families, or for less than 25 persons.[15] This power does not seem to have been affirmed or denied by judicial decision; but on principle it would seem that administrative officers cannot be vested with general power to enter private premises at any time, except to abate actually existing public nuisances, and that every such inspection against the will of the owner should be based on judicial authority complying with the constitutional requirements with regard to searches. The English law requires, in case of refusal of admission, an order of a Justice after reasonable notice to the person having the custody of the house to be inspected.[16] Massachusetts likewise in such case requires a warrant but does not provide for notice,[17] but the English act gives a general power of entry in cases of epidemic disease.[18]

§ 48. **Secrecy of letters.**—The power of inspection cannot be exercised with regard to closed letters, for the purpose of discovering obscene matter, lottery tickets, etc. The acts of Congress forbidding the use of the mails for sending such matter expressly prohibit the opening of first class mail matter.[19] In former times it seems to have been regarded as a prerogative of the government to look into private correspondence in order to detect any danger to the state. So we find in 1406 an order of the Privy Council[20] that Lombards conducting exchange of moneys should write their letters in intelligible language and not in ciphers, and the ordinance of 1656 establishing a regular post office stated such an institution to be the best means for

[14] Chapin Municipal Sanitation, p. 112.

[15] Rev. Code 1897, §§ 845, 251.

[16] 38 & 39 Vict., ch. 55, § 108.

[17] Chapin, p. 113; Rev. L. ch. 75, § 74.

[18] Sec. 137 of Act.

[19] Rev. St. §§ 3929 and 4041, I. Suppl. 803.

[20] Nicolas Proceedings I, 289.

HANDBOOK

OF

American Constitutional Law

BY

HENRY CAMPBELL BLACK, M. A.

Author of Black's Law Dictionary, and of Treatises on Judgments, Tax Titles, Constitutional Prohibitions, Etc.

SECOND EDITION.

ST. PAUL, MINN.
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Search Warrants in Aid of Sanitary Regulations.

There are some cases in which the privacy of the dwelling must be subordinated to the enforcement of necessary police regulations for the preservation of the public health, particularly in populous cities. Thus, it may be necessary to search private houses for the purpose of inspecting their sanitary condition, or to ascertain the existence of a nuisance detrimental to health, or to discover persons who are affected with a dangerous disease such as threatens an epidemic. Such inspections are usually conducted under the orders of the health officers, and are so seldom resisted that the question of their legality does not appear to have come before the courts. But if an entry into a private house could not be obtained, for such purposes, without the employment of force, it is probable that the case would justify the issue of a search warrant.[169]

Time of Execution of Warrant.

At common law, a search warrant was always directed to be executed by day, and it was doubtful whether it could be lawfully executed in the night time, even if no time was limited in the direction.[170] But search warrants issued in aid of the enforcement of the police or sanitary regulations of the state are not common law warrants, but rest entirely on statute. Consequently, it is not necessary to their validity that they should limit the service to the day time.[171]

Military Orders.

The constitutional provision against unreasonable searches and seizures cannot be understood to prohibit a search or seizure made in attempting to execute a military order authorized by the constitution and a law of congress, where the jury have found that the seizure was proper and reasonable.[172]

[169] Tied. Lim. 464.

[170] 2 Hale, P. C. 150.

[171] Com. v. Hinds, 145 Mass. 182, 13 N. E. 397; State v. Brennan's Liquors, 25 Conn. 278.

[172] Allen v. Colby, 47 N. H. 544.

THE LAW

OF

PUBLIC HEALTH AND SAFETY,

AND THE

POWERS AND DUTIES

OF

BOARDS OF HEALTH.

BY

LEROY PARKER,

VICE-DEAN OF THE BUFFALO LAW SCHOOL, FORMERLY PRESIDENT OF THE MICHIGAN STATE BOARD OF HEALTH,

AND

ROBERT H. WORTHINGTON,

OF THE NEW YORK BAR.

"Salus populi est suprema lex."

ALBANY, N. Y.:
MATTHEW BENDER.
1892.

sale. This cannot be dispensed with, except where there is express legislative authority.[1] The notice need not, however, be personal, but may be by advertisement; that, and the notice given by the very fact of distress, is sufficient. Such notice has been declared to be sufficient to bring the owner of property into court, as in other cases of proceedings *in rem*.[2]

Power to issue warrants.

SEC. 97. It is sometimes provided that boards of health shall have power to issue warrants to any constable or the police of their respective cities, villages or towns, to apprehend and remove such persons as cannot otherwise be subjected to their lawful orders and regulations; and, whenever it shall be necessary to do so, to issue their warrant to the sheriff of their respective counties, to bring to their aid the power of the county. All such warrants must forthwith be executed by the officers to whom they are directed, who possess the like powers and are subject to the like duties in the execution thereof, as if the warrants had been duly issued out of any court of record in the State.

Justice's warrant for assistance.

SEC. 98. It is also, and even more generally provided, that when admittance of the board, or its officers or servants, to any building, vessel, or other place, for the purpose of inspection, or of removing nuisances, or causes of sickness, or for any other lawful purpose, is refused or resisted, the board may, upon complaint to any justice of the peace of the county, have his warrant directing the sheriff or constable, taking the necessary

[1] Fort Smith v. Dodson, 51 Ark. 447; Clark v. Lewis, 35 Ill. 417; Gilchrist v. Schmidling, 12 Kans. 263; McKee v. McKee, 8 B. Monr. (Ky.) 433; Morse v. Reed, 28 Me. 481; Coffin v. Vincent, 12 Cush. 98; State v. Snow, 4 R. I. 64; Whitfield v. Longest, 6 Ired. (N. C.) L. 268.

[2] Hellen v. Noe, 3 Ired. (N. C.) L. 493. But actual knowledge by the owner is not equivalent to the written or published notice required by statute. Dillon's Mun. Corp., § 216; Coffin v. Field, 7 Cush. 355.

force, and under the direction of the board, to enter such building, vessel, or other place, and accomplish the purpose for which the board, its officers or servants, sought and were refused admittance. It is perhaps not necessary, but it is always advisable, that notice should be served on the parties refusing or resisting entry of the officers, to the effect that application will be made to a justice, to procure his warrant, and an order under his hand requiring the persons having custody of the premises to admit the sanitary authorities, or their officer or agent. The justice having heard oral testimony, or taken evidence in the form of affidavits, showing that there is reasonable ground for believing a nuisance to exist in or upon the premises, or that for any other reason there is a right of entry on the part of the sanitary authorities, and that the entry is resisted, can then grant his order and issue his warrant; and opportunity for a regular hearing having been duly afforded the parties, there can be no valid objection to the entry.

Compelling attendance of witnesses.

SEC. 99. In order to facilitate the proceedings of local boards of health in special cases and to provide for obtaining information as the basis for general or special regulations, the same power is sometimes, though not in many instances, given them to issue subpœnas to compel the attendance of witnesses, and to administer oaths to witnesses, and compel them to testify under oath, as is possessed by justices of the peace. But safeguards against the abuse of such power are afforded by provisions that no subpœnas shall be served upon any person who, at the time of the service, is outside the jurisdiction of the board issuing the subpœna, and that no witness shall be questioned, nor be compelled to testify, upon matters not related to the interest of the public health. It is usual, also, when such power is vested in boards of health, to require them to designate by resolution one or more of

even under the power to take such measures as are deemed necessary for the safety of the inhabitants, no unlimited or arbitrary authority to control persons or property at their discretion. But there can be little doubt that, whenever they deem it prudent to do so, they may cause red flags to be put upon a house where an infected person is, and cause public placards and notices to be put up or published, or oral proclamations to be made, warning all persons off the place where the infection exists; they may station persons near the premises to give warning to others and may forbid ingress and egress, except under reasonable restrictions; they may cause persons in the neighborhood to remove temporarily, until danger of infection is passed; they may fumigate and disinfect such part of the premises as the infected persons have occupied, or such parts as are liable, by reason of their occupation, to infection; and they may subject all persons who are in attendance upon the sick persons to such regulations as will reduce to a minimum the danger of their carrying away and disseminating the infection. Where there are infected articles that should be cleansed or destroyed, provision is made in the statutes for the issuing of a warrant, to be executed by a sheriff or constable, under the direction of the board of health, by virtue of which such articles may be seized and destroyed, under the usual safeguards which attend the execution of legal process.[1] The proceeding by warrant may be resorted to in cases where the owner of the premises where the infected things are, or the occupant or person in charge has been advised as to the necessity and the method of cleansing and purifying the dangerous articles, and has neglected or refused to comply with the directions given. The authorities may require that the disinfecting shall be done in a manner and to an extent which will meet their approval, but they should not, in the first in-

[1] Devens, J., Brown v. Murdock, 140 Mass. 314, 324. *See, also,* Mitchell v. Rockland, 41 Me. 363; 45 id. 496; 52 id. 118.

removed from the house in which he shall first have become sick or infected, without the permission of the health authorities; nor may any infected article be removed from one place to another, without like permission. Every person who, being sick or infected with any contagious disease, shall depart from, and every person who shall remove,[1] or cause to be removed, or assist in removing, any person so sick or infected, or any infected articles, from any house or building, except by special permission of the health authorities and with proper precautions against spreading the infection, is guilty of committing a common nuisance, punishable as a misdemeanor at common law, and expressly made a punishable offense by statute[2] in many of the States, or by regulations having the force of statutes in local jurisdictions.

Warrants to aid in disinfection of goods.

SEC. 126. Although, in the exercise of their general powers, boards of health may cause goods of any kind which are believed to be tainted with infection to be purified and cleansed, their powers in this regard are sometimes enlarged and made more effectual by special provisions of law. So that whenever, on application of a board of health, it shall be made to appear to any justice of the peace, that there is just cause to suspect that any baggage, clothing, goods or articles of personal property of any kind, found within his jurisdiction, are infected with any disease which may be dangerous to the public health, the justice may issue a warrant to the sheriff or any constable of the county, requiring him to impress men to aid him, if necessary, and to secure such infected things wherever they may be; and, if necessary, to break into any

[1] Without permission from the health authorities a private person has no right to place a family infected with small-pox in an unoccupied house belonging to another, without the consent of the owner, although such removal of the family may be necessary to prevent the spread of the disease. Beckwith v. Sturtevant, 42 Conn. 158; Boom v. Utica, 2 Barb. 104.

[2] Tunbridge Wells. Loc. Bd. v. Bisshopp, 2 C. P. D. 187.

building or other place where they may be, and to place a guard over them, to prevent persons from removing or coming near to such things, until due inquiry be made into the circumstances. By the same warrant, the justice may, if necessary, require the officer, under the direction of the board of health, to impress and take up convenient houses or stores for the safe-keeping of the infected things; and the board of health may cause the removal of the things to such places, and there detain them until they shall, in the opinion of the board, be thoroughly disinfected.

The charges for securing such infected things and for transporting and purifying them must be paid by the owners. But where the sheriff or other officer impresses or takes up any houses, stores, or other necessaries, or impresses men, the several parties interested are entitled to a just compensation therefor, to be paid by the corporation of the place where such persons or property are impressed.[1]

Expense for treatment, nursing and necessaries.

SEC. 127. The expenses of removing sick persons, and of providing medical attendance, nurses and other necessaries, are chargeable, by law, in every case to the person himself, his parents, or those who may be liable for his support, if able;[2] otherwise, to the county to which he belongs,[3] or the town in which he has a legal settlement; and if he has no legal settlement, and belongs to no county, then to the State. The matter is variously regulated by the statutes of the several States, but the usual

[1] *See* Spring v. Hyde Park, 137 Mass. 554; Brown v. Murdock, 140 id. 314.

[2] A person infected with a disease dangerous to the public health who is removed to a separate house by the health officer and provided by them with nurses, and medicines and other necessaries, is not chargeable for the expenses incurred for these purposes, it is said, unless he is able to pay *all* the expenses thus incurred. This puts upon the statute a very strict construction. Inhabts. of Orono v. Peavey, 66 Me. 60.

[3] The phrase "at the charge of the town to which he *belongs*," means the town in which he has a legal settlement, and not the town where he may happen to reside at the time. Inhabts. of Hampden v. Inhabts. of Newburgh, 67 Me. 370.

the locality personally, or cause that to be done by an agent of the board, for the purpose of inspection and examination. In practice, the person who makes the inspection, whether a sanitary inspector or not, on finding that an undoubted nuisance exists, should at once give a verbal notice to the owner or occupier of the premises to remove the nuisance forthwith, indicating, in ordinary cases, the best way in which this may be done. If, on visiting the place a few days afterward, he finds that the notice has not been complied with, the matter should be reported to the clerk of the board, or other proper officer, so that it may be entered in the books; and thereafter the proceedings should be conducted in the customary formal manner.[1]

If right of entry to premises for the purpose of inspection is refused, a warrant may be issued by the board or by a magistrate, as the statute provides, directing the sheriff or constable, taking such force as may be necessary, and under the direction of the sanitary authorities, to effect an entry and accomplish the purpose for which entry was required.

Ordinary procedure against nuisances.

SEC. 145. It is the duty of the local healtn authorities to receive and examine into the nature of complaints concerning nuisances, or causes of danger or injury to life and health, within the limits of their jurisdiction. The notice or complaint in regard to a nuisance may be given by the sanitary inspector,[2] or by any other person. Any form of notice is sufficient, if expressed with such distinctness as to enable the authorities to discover the location and character of the nuisance. It is not necessary that the name of the owner or occupier of the premises should be mentioned in the notice; and the notice may be given

[1] Hart's Manual of Public Health, 190–192. It is not necessary that there shall be a *complaint;* the board and agents may act upon their own knowledge or information. Swett v. Sprague, 55 Me. 190.

[2] Comm. v. Alden, 143 Mass. 113.