

HEALTH NUISANCES, PUBLIC NUISANCES AND PROPERTY NUISANCE

Complaints are frequently made to the State Board of Health about nuisances of various kinds by citizens who seem to feel that health authorities have the power to act officially on any condition that may be offensive to citizens and property owners. Such is not the case. The State Board of Health was established by law to carry out certain duties and to enforce certain laws specifically assigned to it by the State Legislature. There are many cases in which the Board or its representatives have no authority to act. Typical of the complaints which are borderline cases or which are definitely not under the province of the State Board of Health are those pertaining to weed patches, poison ivy, mud holes, drainage, line fences, keeping livestock or poultry in a community, payment of rent, water service, and barking dogs. However, many of these problems can be controlled under the local authorities' power to enact ordinances.

The State law recognizes three types of nuisances: public health nuisances, public nuisances, and property nuisances. Steps necessary to seek abatement by law are different in each classification.

HEALTH NUISANCES

IC 16-1-4-11 provides:

"No person shall institute, permit or maintain any conditions whatever which may transmit, generate, or promote disease; and any health officers, upon hearing in any way of the existence of such unlawful conditions within their respective jurisdictions, shall order abatement, in writing, if demanded, and specifying particularly wherein the conditions may transmit disease, and naming the shortest reasonable time for abatement. Upon refusal or neglect of any person to obey the order, the prosecuting attorney of the judicial circuit wherein the offense occurs, upon receiving the information from the health officer, shall institute proceedings in the courts for enforcement."

Thus, upon receiving a complaint regarding a possible health hazard, it is the duty of the local health officer to investigate and to order its abatement if such is warranted. If such condition is thereafter permitted to exist, the local health officer shall refer enforcement to the county prosecutor.

PUBLIC NUISANCES

IC 35-43-1-2 provides: (Criminal mischief - Institutional criminal mischief)

A person who:

1. Recklessly, knowingly, or intentionally damages property of another person without his consent; or

2. Knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person; commits criminal mischief, a class B misdemeanor. However, the offense is:

A. A class A misdemeanor if:

i. The pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500);

ii. The property damaged was a moving motor vehicle; or

iii. The property damaged was a car or equipment of a railroad company being operated on a railroad right-of-way; and

B. A class D felony if:

i. The pecuniary loss is at least two thousand five hundred dollars (\$2,500);

ii. The damage causes a substantial interruption or impairment of utility service rendered to the public; or

iii. The damage is to a public record.

b. A person who recklessly, knowingly, or intentionally damages:

1. A structure used for religious worship;

2. A cemetery or a facility used for memorializing the dead;

3. A school or community center;

4. The grounds:

A. Adjacent to; and

B. Owned or rented in common with:
a structure or facility identified in
subdivision (1), (2), or (3);

without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a class A misdemeanor. However, the offense is a class D felony if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500), and a class C felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

Also, note IC 35-45-3-2:

- a. A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in a container provided for for refuse, commits littering, a class B infraction.
- b. "Refuse" includes solid and semisolid wastes, dead animals, and offal.
- c. Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of that vehicle.

Thus, should a complaint address itself to a nuisance, other than a health hazard, the complainant should be directed to the local prosecuting attorney for action.

PROPERTY NUISANCES

By far the most frequent nuisance action is that if a property nuisance in which the aggrieved party directly seeks enjoinder of the offensive conduct.

IC 34-1-52-1: defines a nuisance as "whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action."

IC 34-1-52-2: "Nuisance-who may sue - (a) An action to abate or enjoin a nuisance may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by the county attorney of the county in which a nuisance exists, or by the attorney of any city or town in which a nuisance exists."

IC 34-1-52-3: "Nuisance--Remedy--Where a proper case is made, the nuisance may be enjoined or abated, and damages recovered therefor."

From the above, it can be seen that the remedy to be sought in a particular situation depends upon the class of nuisance in which the objectionable conduct falls.

From this discussion it can be seen that health authorities have no authority to abate private property nuisances, but that the person or persons affected by the nuisance must file an information (affidavit) with the local prosecutor or bring an action in the courts for relief.

WE REFER YOU TO YOUR LOCAL PROSECUTING ATTORNEY OR YOUR PERSONAL LEGAL ADVISOR FOR INFORMATION ON THE ABATEMENT OF PUBLIC OR PROPERTY NUISANCES.

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