

**MADISON COUNTY BOARD OF HEALTH  
Special Board Meeting**

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF MADISON    )

Proceedings of the County Board of Health of Madison County, Illinois, was held telephonically due to COVID-19 restrictions on May 7, 2020.

**THURSDAY, MAY 7, 2020  
3:00 PM  
SPECIAL SESSION**

The Board of Health met pursuant to recess taken March 18, 2020.

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The meeting was called to order by Kurt Prenzler, Chairman of the Board.

The Roll Call was called by Debra Ming-Mendoza, County Clerk, showing the following members present:

PRESENT: Messers. Chapman, Ms. Dalton, Ms. Dutton, Ms. Glasper, Goggin, Guy, Hankins, Ms. Harriss, Holliday, Jones, King, Kuhn, Madison, Malone, McRae, Michael, Minner, Moore, Pollard, Valentine, Walters and Wesley

ABSENT: Dodd, Foster, Gray, Ms. Novacich-Koberna, Parkinson, Petrillo and Trucano

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Public comments were received and placed on file.

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**Mr. Prenzler:** Thank you very much. We've had a number of public comments come in by email. We only have one hour today because Rob Henke, who has done an outstanding job of conducting these meetings, has another committee meeting at four o'clock so we only have one hour. So, in the interest of time, what I've done is sent all those public comments to the county board members. We have a representative, Jeff Ezra from the State's Attorney's Office on the line with us and the purpose of this meeting today. This is the first time, certainly for me, that we've had a meeting dedicated as the Board of Health. I think that when we all ran for office, we knew what the County Board was and we think of ourselves as the County Board but I am asking you to take off that hat and put on your Board of Health hat because you are also members of the Board of Health. Now, I've invited a guest speaker here today, he's a business man and he's a lawyer. He has a practice in Glen Carbon and his name is Tom Devore and I've asked him to talk to us about the Board of Health and really what is the Board of Health? What are our duties, our responsibilities, our rights? What can we do, what can we not do? So, I think that's what, at least what I'm really desiring to know. I've given a whole lot more thought to being a part of the County Board than I have in terms of, I'll just admit that and that's probably true for all of you also. We're in a really unprecedented time and I thought that the first item of business would really be for us to understand who we are as the Board of Health. If I would just address Jeff Ezra, Jeff is that ok with you if Mr. Devore began speaking?

**Mr. Gibbons:** This is State's Attorney, Tom Gibbons.

**Mr. Prenzler:** I didn't realize the State's Attorney was on the line, I'm sorry.

**Mr. Gibbons:** Yes, I would simply advise the members of the committee that you can certainly hear from any individual you'd like to hear from and you have that ability but to caution you that advice from attorneys who are not provided to you by statute or the Constitution, that the advice that is given by them is not given as an attorney and you cannot rely on that advice in the actions that you take. So, I would simply caution you, you may certainly listen to Mr. Devore and what he has to say but he does not represent you and he does not have the authority or ability to give you legal advice on this particular matter and you will not be able to rely on it if you take any action based on what he says. So, with that being said.

**Mr. Devore:** Mr. Gibbons, Tom Devore here...

**Mr. Prenzler:** Excuse me, Tom, I'm going to invite you to take my chair.

**Mr. Holliday:** Will we not be able to hear from Toni Corona on what the specific...can you hear me?

**Mr. Prenzler:** Yes, I can.

**Mr. Holliday:** Can we not hear from Toni Corona on what the purpose of our Board is?

**Mr. Prenzler:** I would first like to hear from Mr. Devore. Is Toni Corona on the line?

**Mr. King:** Yes.

**Mr. Prenzler:** Very good and we can then ask questions but I think I'm going to give the seat over to Mr. Devore, he can sit in my seat and we'll start from there. Thank you.

**Mr. Devore:** Mr. Gibbons, are you there, sir?

**Mr. Gibbons:** I'm present.

**Mr. Devore:** Ok, I agree with what you echoed and I want to make a clarification if I could, and then after you hear my clarification, I would ask for you to reiterate your position as you are legal counsel for the board. The efforts that our law firm has been taking across the state of Illinois has been a process of which we have done individually business by business, and there's a lot of those businesses that we are representing and we continue to represent. In those efforts, I can say to you, as the State's Attorney for Madison County, those effort have brought to fruition the Board of Health participation and authority in these issues of public health that I, in my experience, what I've been dealing with in the last month, I don't think they understood and I'm not here to explain to your Board of Health what that is. I can tell you that I've had conversations with others on business by business issues once they get the letter and the documents from us that we present to where the Board of Health has to take action and as of yet, I've not had a Board of Health take action. So, my very brief conversation that I've had prior to today was that our firm has numerous business and numerous individuals in Madison County who are asking and they're pleading with our firm to help them. I believe that as their attorney and I am here today on behalf of my clients to just have a conversation with this Board of Health and with you present as to what it is, in fact, we're presenting on a case by case basis to state boards or public boards of health and county level across southern Illinois and some of them are going across the state in general. So, if this board decides after consulting with you, only you, with wanting to review the information I'm giving that I've given to others as well on a smaller

scale than they can make any decisions that they're going to make in conjunction with you. So, I agree with what you said, sir, I'm not here to tell anybody anything other than my clients have a voice through me. They're asking me to present that through some documentation to this board, and this board does whatever it feels is best and in the interest of his people and then my clients can respond accordingly. So, based upon that foundation, if you're still ok with me speaking in that manner, I'd be glad to if you're not, I would understand that too.

**Mr. Gibbons:** I certainly would never want to try to deny you the ability to advocate on behalf of your clients. No, I think the description of what your purpose of speaking today left, I think, perhaps the mistaken impression that you would be advising the board today and so I just wanted to make sure that was clear and you cleared that up so I really appreciate that. Thanks for making that more clear so the board can understand you're here on behalf of your clients, for you to represent their interests and talk to the board. Ok, so, I appreciate that clarification. Thank you so much.

**Mr. Devore:** No problem. One, it's not appropriate for men and women in our profession and two, you know, it's not appropriate and I would never do that to you because you obviously are their lawyer, you will always be and until you move on to something else. So, I'm certainly not here to try to take that role because that would be disrespectful to you as well as an involved attorney, ok?

So, I have here and I appreciate, again, I appreciate this on behalf of my clients who were sitting and waiting with me and other lawyers in our firm to deal with the issues that we all face as a state and as a country, we're aware of that, you know, I want to first point out to everyone that I actually, personally, as a citizen of the state, as an attorney on behalf of my clients, I find it to be a privilege to get the opportunity to come before this board and on behalf of that list of clients who are just looking for their voice to be expressed, so maybe that you can make the good choices that I know you'll make with information that I have been able to acquire on behalf of my clients not only am I here for today, but I've been for the last month, month and a half trying to advocate for their voice to be heard and again, on behalf of them, if I express these views through this documentation, I'm confident that an informed board, such as yourselves will do what's right. Again, I'm humbled to be here and I hope that wherever my god given abilities have been given to me that I do justice in explaining this stuff to you. Now, as most of you may not know, I do live in Bond County but I was actually born and spent most of my childhood in Collinsville. My parents were poor of modest means. My mother was 1 of 17 and my father was 1 of 6. So, I have hundreds and hundreds of family members in Madison County, I have cousins who actually own businesses right here not far from this courthouse. So, you know, I take this serious from a professional level and also from a personal level, so, that's why I'm here today and I also want this board to know I'm a stranger to your community. When I'm here to present as I see it on behalf of my clients has nothing to do with politics. It doesn't matter to me as I look around this room or at the people on the screen, I don't know any of you, I don't know party politics or anything. I've got one purpose and that's trying to explain on behalf of my clients what I see the role of the Depart of Health at any county level being and this one being one of the bigger ones in the area that I live in, it's extremely important to me that at least we present to you what their views are and what they understand by having me as their representative, be your role. As I continue, I'd like to keep a couple of words in mind that I think are very important that have been mischaracterized by people with good intention. The word "public health" that we've been hearing a lot. Public health is not a narrow word that deals with infectious diseases in my client's minds opinion. That term, I think, if you look, has a much broader reason and deals with the overall impacted government regulations etc have on people as a whole which includes economic reality. So, I'd ask you to consider that. Another one that I would ask you to consider as I've been defending people across southern Illinois and central at this point is the term "quarantine". The term quarantine is a defined term in the pandemic plan that hopefully you have been provided a copy that I'll get to later and it says it's the separation and restriction of movement or activities of persons who are not ill but are believed to have been exposed to an infection. Keep that in mind, that language of separation and restriction of movement and the reason I point that out to you is I think you'll find it important as you start

considering how to help the people of this county and dealing with whether or not the executive order when Mr. Gibbons and you talk about your role whether that executive order is a tantamount to a court are not because they don't use the term but I think you'll figure that part out. The documents that I have given you and I know I don't have a lot of time and I asked you this is a lot of information. I have spent probably 18 hours a day, every day since April 1 trying to figure this out and I'm not a constitutional law person and I tell my clients that. I do real estate bank error, various different types of things, but I can read this stuff if I get the desire and I've read it all at least 20 times and my clients and I talked about this and I'm going to go forward. Here's one of the main questions. I've got five main questions for you guys to consider. Who has the authority to restrict a person as to their movement or activity? Who has that authority? That's an important question. Does that authority lie with the executive branch or does it lie with the legislative branch and if it does lie with the legislative branch, has the legislative branch delegated that to an administrative agency? Keep that in mind. Is it executive? Is it legislative? If it's legislative, who have they delegated to? Can the legislative power if it is, in fact, the legislative power be served and taken over by an executive? That's a good question. Any person's movements or activities be restricted? Even if they are not ill or believed to have been exposed to an infection? That's extremely important in these matters as I've tried to help my clients. Say another way, is there any authority to restrict a perfectly healthy persons movement for the sole purpose of flattening the curve? We've all heard that term acknowledge and ask yourself, please, as you're deciding going forward, do we have the requisite authority as this board should we choose to act to force healthy people to stay at home to flatten the curve and I'm going to get to some documentation that will give you things to think about and talk to Mr. Gibbons about. Here's an even bigger one, who has the authority to close a business, executive or legislative? If it's legislative, again, what government administrative agencies have been delegated that power. These are imperative issues that I've been fighting across southern Illinois with. I've been in the courtroom already and I don't know if Mr. Gibbons has read the transcripts, but I hope he does if he hasn't already. Once it's been determined, who has that authority as to either of these matters, whether it be legislative or executive, how is that authority enforced and how is it enforced consistent with the fundamental principles of due process? Those are imperative questions. I'm going to start now with the documentation that I have provided you and I can answer each of those questions for you from behalf of my clients of what their positions are, that I'm trying to communicate to you. Then, when I'm done, again, I would ask you to consult as a group, consult with your, you know, your attorney who very competent as my understanding and figure out what this board might want to do.

So, we have two issues. We have the closure of businesses or the taking of their businesses away from them or close them or use them and we have the issue of restricting people's movement. I've given you what Mr. Gibbon's and I will know is a landmark case. I know I studied it in law school, Mr. Gibbons may have too. In the *Jonestown v Sawyer* and I ask you to discuss that case with him. In that case, the exact issue that we're dealing with, and I'm reading part of it, what we are asked to decide whether the President was acting within his constitutional power when he issued an order, an executive order, directing one of his agencies to take possession of steel mills. Now, this was a President and National Congress. The separation of powers arguments, again, I would ask you to consider it Mr. Gibbons, are the same on behalf of my clients. I'm suggesting they are and this case goes on to discuss the separation of powers of whether or not a President during the time of war has the constitutional power or the statutory power to take over the steel mills and have them run for the benefit of the people. If you can see the highlighted pages of that, I want to point out for you and Mr. Gibbons is on page three. It says the President's power, who's the supreme executive, must stem from either an act of Congress... They don't have this information? None of it? I have given documents to the Chairman of the Board of Health and one of them is called Exhibit 8 and I'm reading from, Mr. Gibbons, *Youngstown v Sawyer* 343 US 579. It talks about where an executive branch, whether it be a governor or a president, has the authority to do certain things. I want to read you a couple excerpts, ladies and gentlemen, even though the theater of war can be an expanding concept, we cannot with faithfulness to our constitution hold it. The Commander in Chief has the ultimate power to take possession of private property. Please talk to Mr. Gibbons about that. When we're talking about taking possession of private property, and as far as closing the business of our people, and that was written by Justice Black in the 1950s.

Then Mr. Justice Douglas, when he concurred, read his concurrence, and I'm going to read to you. This is so important, please, because I'm hearing it on the radio and on the TV every day and it talks about power and listen to what Justice Douglas said folks. Again, on behalf of my clients, I cannot express these words of my own any clearer than this Justice did five decades ago. There can be no doubt that the President that the emergency which caused the President to seize the steel plant was one that bore heavily on the country but the emergency did not create power. It merely marked an occasion when power should be exercised. The fact that it was necessary that measures be taken to keep steel production does not mean the President, rather than Congress had the constitutional authority to act. The Congress as well as the President are trusted with the national welfare. The president can act more quickly than Congress. We've heard about that. Here's what they say, all executive power from the reign of ancient kings to the rule of modern dictators has the outward appearance of efficiency. Legislative power, by contrast, is slower to exercise. There must be delay while the ponderous machine of committees, hearings and debates to put that in motion. Here this is even consider this in the light of what you're hearing on the TV today and on the radio by the executive branch. No disrespect to any party, just our executive branch and I will say that generically. It takes time and while Congress slowly moves into action, listen to this, the emergency may take its toll in wages, consumer goods, war production, the standard of living of the people and perhaps even lies. Legislative action may indeed be more cumbersome, time consuming and apparently inefficient, but as was said by Justice Brandeis, a few years prior, the doctrine the separation of powers was adopted by the convention of 1787 not to promote efficiency, but to preclude the exercise of arbitrary power. Please talk about that case with Mr. Gibbons as he decides to move forward. The next case I have for you to consider, Mr. Gibbons, with your group is *Barmore v Robertson*, this is a Supreme Court case, Illinois Supreme Court, not Federal, from 1922, almost one century ago. Our state was dealing with and our country was dealing with the typhoid virus. Virus sounds familiar, correct? This was a case where the citizens of the state of Illinois brought an action for habeas corpus. Mr. Gibbons will explain to you extremely well. She was being allegedly unlawfully restrained against her liberties. Sound familiar? In this case, again, it's still, according to me and ask Mr. Gibbons to confirm the law in the state. It talks about a few things that I want to point out to you that I think should be important in your decision making, should you decide to take action. You've all heard on the television and on the radio from medical experts, of which I am not one, I don't pretend to be one, but I'm repeating what I've heard and until I found this case, it was what I thought to be a novel concept that this disease can spread itself from healthy people or people who are sick but have not yet become symptomatic. I believe we have a doctor here that could speak to that but listen to this, that's not a new advent folks. Let me read you a passage. Mr. Gibbons, this is from *Barmore v Robertson* Supreme Court 1922-302-L-422. It is found that many healthy individuals are a constant source of danger to the community, a reason of the fact, that they are producing and throwing off germs after an attack of the fever, perhaps so mild, that it was not at the time recognized. Many persons continue to develop and discharge the fancy medical word, Bacilli, the fever, and they are thus causing frequent infections especially because owing to their apparent good health, neither the carrier nor his friends are on guard. I've heard that consistently for the last month and I would ask Dr. Hughes that is here to represent and help the board along with Mr. Gibbons to take a look at that and see if this really is a new issue. I don't believe that it was on behalf of my client and it goes on to say the duty to preserve the public, fine example, support in the police power and which the state cannot surrender. So, there is an ability to deal with protecting our public health from everyone. Every state has the power to pass and enforce quarantine health and inspection laws, the constitution guarantees that no person shall be deprived of life, liberty or property without due process and that no state shall deny any person within its jurisdiction the equal protection of the laws were not intended to limit the subjects upon which the police power the state may be asserted. On behalf of my clients, I would suggest to you when we get to the actual laws in our books, that is taken into account as a balancing of liberty against a balancing of the public health because they're both imperative. Here's what I want to point out to you Mr. Gibbons, generally speaking, what laws or regulations are necessary to protect public health and secure public comfort is a legislative question. The exercise of the police power is a matter resting in the discretion of the legislature or a board, here we go, I'm getting to you folks, the board or tribunal to which the power is delegated. The legislature, may in the exercise of the police power of the state create boards, with powers

prescribed rules and imposed penalties. That's coming here real briefly too ladies and gentlemen, the legislature has the authority to exercise its powers by general law and to confer upon boards and other agencies authority and discretion to execute those laws. Here's where I'm getting to, and this is one of the best parts of this particular case and it cites the current law of Illinois today, it talks about the administrative rules. The department of Public Health has the general supervision of the interest in health of the lives of the people in the state, and it gives supreme authority over matters of quarantine. It also was given the authority to make rules and regulations necessary for the preservation of the public health, and it makes the duty of all local health and police officers to enforce these rules. The Act even provides penalties for citizens that don't comply. I've heard from a lot of my clients asking me how can this Executive Order, how is that enforced against me? I said that's a good question. The Department of Public Health Act that we're getting to has enforcement mechanisms. Flipping to the next page, page five, Mr. Gibbons, when you get it as a highlighted copy, it talks about under the general powers the State Department of Health has the authority to isolate persons who are throwing off disease. By the powers given to the health department are broad and far reaching they are not without their limitations. We have said while the courts will not pass upon the wisdom of the means to adopt and restrict the spread of a contagious disease, we will interfere if the regulations are arbitrary and unreasonable. A person cannot be quarantined upon mere suspicion that they may have a contagious or infectious disease. Page 6, health authorities cannot promulgate enforce rules which merely have a tendency to prevent the spread of a contagious infectious disease. I want to read that again, folks, because on behalf of my clients, I'm here to suggest to you that this means flattening the curve. Health authorities cannot promulgate enforce rules, which merely have a tendency to prevent the spread of a contagious infectious disease. The health authorities cannot interfere with the liberties of any citizen until an emergency actually exists. I'm asking you to consider that when you talk to Mr. Gibbons, please.

Moving on now to the actual framework of the United States and the Illinois Supreme Court, next exhibit C, which is the Department of Public Health Act. This act was promulgated by the legislative branch of the state of Illinois. It says, the State Department of Public Health has general supervision of the interests of the health and lives of our people. It has supreme authority in matters of quarantine and isolation. It adopts Illinois administrative procedures and it says all local boards of health authorities, officers, police officers and the sheriff are employed and authorized to enforce these rules of the Department of Health. Now, the one I sent it to the Chairman of the Act, page two and page three are spun around. So, Mr. Gibbons, if you go to page two of the Act, in paragraph D and C, it lays out the provisions of the standard of proof the burden of proof and the procedural due process that under the Department of Health Act is afforded every citizen of the state of Illinois and I'm here on behalf of my clients today to ask this board should it decide to act to respect that. The next document I have is Exhibit D, it's the Emergency Management and Agency Act. This is the act by which the Executive Office of our state has been entering executive orders, I'll get to it, not just the Emergency Management Act is also cited. The Constitution, and I would ask you to consider the federal case I provided and whether or not the powers being exercised under this executive order are constitutional or statutory, that's for you, Mr. Gibbons. Section seven of the Emergency Management Act, I'm reading from it, in the event of a disaster, as defined in Section four, the governor made a proclamation declaring that a disaster exists. Upon such proclamation, the governor shall have and may exercise for 30 days for fear not to exceed 30 days. The following emergency powers it lists, 14 powers that the governor has so upon the declaration of a valid disaster, presuming it's valid, the governor has for 30 days from that proclamation, 14 express powers. I'm going to come back to those in a second. Executive Order 20-32, exhibit E, it is the current one in force, it lists by the powers vested in the governor, state of Illinois pursuant to the Constitution, and various sections in the Emergency Management Act. He ordered various things, wearing masks, social distancing, clothing, businesses, etc. That's exhibit E, we're all familiar. Exhibit F, Administrative Code of the Board of Health Act, the Administrative Code lays out the exact procedures that the Department of Public Health, local Board of Health, which is yourselves, must follow in order to quarantine or isolate someone and more importantly, gentlemen, close a business. I'm asking if this board wants to do that to please follow those rules for my clients. I have Exhibit G, which is an enforcement directive at the Illinois Department of Public Health. This was sent by the Siren System on

April 17th, to every local board of health in the state of Illinois. This enforcement directive was signed by Dr. Ezike and it says at the very end, if you do not adhere to these executive orders, the local department of health, Administrative Code etc., they can seek an order against you under specific provisions. Please look at that Mr. Gibbons. Now, I have 2 exhibits, exhibit I and exhibit J. Exhibit I and exhibit J are Orders for Closure of Facility and Orders for Quarantine of an Individual. These documents exist in every county health department in the state of Illinois to my understanding, and every client that I've been trying to help I've seen these documents. These documents I would suggest you are consistent with the Illinois Department of Public Health Act. I'm suggesting to my clients that's the case I know nothing to the contrary. These documents are important, ladies and gentlemen, because these documents comply with the supreme authority of the Illinois Department of Public Health Act and it lists in there that you have to provide facts by which a person can be quarantined. You have to tell them that they have a right to counsel before they're quarantined or isolated. That information is in the statement of legal rights and duties. I have clients who have called me in the last month, who have received these orders from the Department of Health in their county, and I've looked at the facts and circumstances and we've discussed it and every time, my client has voluntarily agreed to quarantine for guess, how long ladies and gentlemen, not a period of time to exceed the incubation period of this infectious disease, 14 days, not two months. Last document that I provided you is exhibit L. Exhibit L is 120 page Pandemic Response Plan for Influenza. You may hear the Executive Office suggest, well, this plan doesn't apply because COVID is not an influenza pandemic. Again, I'm not a medical expert, but I know the rules that are within this pandemic plan lay out the same rules about the Illinois Department of Public Health Act wanting to close a business of a person of the state with the due processes that my clients have to receive before their businesses are closed. I'm asking you to consider that information as you move forward with Mr. Gibbons on how to put together a plan.

**Mr. Prenzler:** Okay, very good, I want to ask a question. If this Board of Health, I'm asking the question of Mr. Devore, and I'm going to let you folks ask some questions, I'm not going to try to just monopolize the time. If this Board were to say, you know, in our determination, we want to close all health clubs. How would we do that, Mr. Devore?

**Mr. Devore:** I can't answer the question in that fashion, that's a question for Mr. Gibbons to answer, but I actually have health clubs in my list in Madison County who wants to open and I can tell you that what I expect as their attorney, Mr. Gibbons, if they're going to be closed, I expect that my client will get the document that I have provided to the Chairman and that document is exhibit I, Order for Closure of a Facility. Fill out that document, give it to my client, give them the factual basis by which you believe they are a health risk, give them their rights and obligations, let them know they have the right to counsel. Then if they call me, fine, if they call somebody else, fine. An attorney can look at that document and say, does a factual basis exist by clear and convincing evidence that opening this business is a public health risk? I've been doing this process...

**Mr. Prenzler:** Mr. Devore, let me jump in, what if they say we don't want to be closed?

**Mr. Devore:** If they don't want to be closed, if they say, I refuse right now, if you tell my client and in fact, it's my client because I have one who wants to open. If he were to open, my advice to him has been, if you open, and the Department of Health, your local department of health feels that you are such a risk, they can call the sheriff's department or the city police and come close you down and I cannot help you. But, what I can say to you, to my client, is that within 48 hours or a reasonable time thereafter, you get to be in front of a court of competent jurisdiction and have your day in court to argue in front of a judge that you are not a public health risk based upon those standards. If they lose that argument, the court's going to issue an order to close them down.

**Mr. Prenzler:** Very good. Now, any questions?

**Mr. Gibbons:** I have a question for Mr. Devore, this is Tom Gibbons. Ok, first of all, I'd appreciate if you or someone could send me the materials that you're referencing, because none of that has been provided to the state's attorney's office so we look forward to reviewing that. We will certainly thoroughly review that. I'm curious, to which county boards of health have you made this presentation to?

**Mr. Prenzler:** Mr. Gibbons, I'd like questions from the county board, I don't want to get into other counties. I'd like to have questions from the board. Excuse me, we only have we only have a brief period of time. We only have 25 more minutes.

**Mr. Gibbons:** I'm just trying to help provide some context to see whether this is a stable argument.

**Mr. Prenzler:** We will follow up, Mr. Gibbons. Ok, any questions from the county board, please? I don't want anyone to run out the clock here.

**Mr. Holliday:** This is Doc Holliday, I would like to hear the other county board's he has made this presentation to.

**Mr. Prenzler:** I'm not sure it's really relevant.

**Mr. Holliday:** Did you hear me?

**Mr. Prenzler:** Yes, I did, but I'd like to ask another question.

**Mr. Holliday:** Then why have him on to ask questions that can't be answered?

**Mr. Prenzler:** Because I don't think that's relevant. I want to ask, can this board, Mr. Devore, in your opinion...

**Mr. Holliday:** Yes.

**Mr. Prenzler:** ...say that people can go to church. Can we need tomorrow and say people can go to church if they exercise proper distancing? Can we do that?

**Mr. Devore:** Mr. Gibbons, I think you can appreciate the nature of how that questions being asked and you know I can't answer that question in the way that has been asked, because that's the question for you, sir. I can tell you that I do have churches that have contacted me and if Mr. Gibbons calls me after this meeting, I can explain to him how I've addressed that in at least 15 counties across southern Illinois, I'd be happy to talk to you, sir. But to that extent, I can't tell this board they can or can't do anything. What I can say is that if I have a church that wants to get open, I can come in front of this Board of Health, I told my clients and seek either 1, let me open for grief free...

**Mr. Prenzler:** Answer quickly.

**Mr. Devore:** I'm trying but it's not easy stuff, sir. One, I'm going to open unless you take me to court and get an order. I can ask that for a church. I can ask that for a business. I can ask for an individual. I've chosen not to do that in Madison County one business at a time, because your board is going to discuss these matters on a grand scale, which to me, you solving that problem yourself is the best way if Mr. Gibbons thinks it's a problem, versus my clients doing that one business at a time.

**Mr. Guy:** Mr. Devore, thanks for coming today and presenting.



**Mr. Devore:** I'm trying, sir.

**Mr. Guy:** Let's just say, hypothetically, the county votes, let's just say we decided hey, we as a county is going to go against the Governor's executive order and vote to reopen. So, one of your clients is a Barber or a Salon and our county says hey, you can open, our Health Department is not going to enforce it, but then the state pulls their license.

**Mr. Devore:** You know what? That's the best question that I've been asked and I have an answer because, sir, I can tell you and again, Madison County, I mean, we're close to each other in Bond and out of respect for this community, I've been waiting to see if you guys can handle it versus me doing it one business at a time. I can't give you names but I can give you at least three occurrences in the last two days where my clients have got a response exactly what you're talking about after we went through the proper protocols. I'll be glad to explain to Mr. Gibbons we got letters by the EOC and liquor commission and I have sent letters back to them, but I'm going to point you to, sir, and this is important, so please give me a little bit of deference. I need to go to the executive order of the governor. Again, I read these documents and I wonder if people at the state level read them all the time and if you go to paragraph 17 of the enforcement, this executive order may be enforced by state or local law enforcement, state police, your county, your city police, or specific sections of the Emergency Management Act. It lists four of them. There are not even enforcement mechanisms. So, the Illinois Liquor Commission, the Illinois Economic Development, and the Illinois Department of Public Health, taking this action, they're taking it against my clients right now. Trust me, the letters that I sent on their behalf, it said you point me to a provision in this executive order where it says you have any enforcement authority over this. That's what I've done for my clients. How you guys might choose to address that from a Board perspective is for you and Mr. Gibbons to discuss.

**Mr. Prenzler:** I'd like to step in for a second here. I want to emphasize that we're involved in balancing here, balancing constitutional rights, balancing our economy and balancing our health and safety. I want to just clarify that I was just asking a hypothetical regarding churches. Our goal here along with churches in Madison County, desire health and safety and to protect if we want to be good neighbors, I just want to clarify that, I was just trying to get the ball rolling in terms of questions. So, any other questions for Mr. Devore from the county board?

**Mr. Holliday:** Not for him, but can we hear from Tony Corona what the purpose is of our Board of Health?

**Mr. Prenzler:** Mr. Holliday, I'd like to hear from, who else from the county board, please?

**Mr. McRae:** So, if I'm just putting this kind of in a nutshell, Mr. Devore, am I saying your name right? I'm sorry.

**Mr. Devore:** That's okay, it's Devore, sir.

**Mr. McRae:** Devore, I'm sorry, thank you. So, what you're saying is after 30 days, what your intention would be if you took this to court, would be that the governor has the authority for a quarantine for up to 30 days, if I'm understanding this correctly. Beyond 30 days, it's up to the local health board, which is the county board in this case, to make the decision as to whether or not a quarantine should continue.

**Mr. Devore:** No, sir, and again, what I'm saying on behalf of my clients here is that the issues of quarantine, isolation and closure, those are responsibilities of the legislative authority delegated to this board by the legislative branch. So, you wield that power, that's what I'm saying in every letter.

**Mr. McRae:** No, no, I got that. I got that. But I mean, but you were saying that for 30 days, the governor, you quoted some additional legislation that you did seem to think that the governor has some authority, initially.

**Mr. Devore:** Well, on behalf of my clients, I would say to you, that under the proclamation, and I'm arguing this in courtrooms across our state, which is not really why we're here today, but I want to clarify that. What I'm saying is that there's a 30 day Proclamation, when he issued that disaster, he has certain emergency powers and there's 14 of them. On behalf of my clients, I would suggest to you that in those emergency powers, none of them give him the authority to close a business. None of them give him the authority to restrict the movements of our people, his emergency powers, on behalf of my clients, it's my opinion, do not go that far in those particular specific are for you as the Board of Health, that's what I'm arguing across the state.

**Mr. McRae:** Ok, I get it.

**Mr. Devore:** Ok, thank you.

**Mr. McRae:** Yes. You're saying that basically, that from the very beginning, that those were not enforceable by law.

**Mr. Devore:** By the executive branch, sir.

**Mr. McRae:** It's okay, we're six or seven weeks into this stuff. So, by now what you're saying though, is the Board of Health, which is the County Board in this case...

**Mr. Devore:** Yes, sir.

**Mr. McRae:** ...has the governing authority to enforce those types of restrictions and or to remove those.

**Mr. Devore:** No, what I'm saying is that, and again, Mr. Gibbons, you're free to call me, sir, anytime, you call me after this, I'll give you my cell phone. What I'm saying is, regardless of the 30 day issue, the 30 day issue is whether his Proclamation of Disaster can give him emergency powers longer than 30 days is a separate issue. What I'm saying, on behalf of my clients, is that he does not have the power to close businesses or to quarantine people. I'm saying those are specifically, if Mr. Gibbons, looks at the statutes that I can give him, the case file I can give him, have always been your authority. You have that authority under the confines, let me finish, you have that authority under the confines of the due process that's required, that's all.

**Mr. McRae:** Now I'm just trying to get to the gist of the whole matter that basically, we only have 15 or 20 minutes left, but basically, if you were arguing this in the in the court of law, is it to say, if the Board of Health said we can basically go back to work and have certain guidelines, though we have the authority to do that.

**Mr. Devore:** I'm saying, in every court that I'm in right now, and I'm saying it on letters on a case by case basis on many counties throughout here and I've given Mr. Gibbons the authority and the case law and I'll sit down with him for days if I need to, that this board of health, every board of health and every county builds that authority to close businesses and to restrict your people's movements. As long as you do that within the confines of the law that you have that authority to do that, and how you do that is up to you as the Board. Read the cases I've sent you, no one person can wield this power, only a Board can wield this power and that Board in this county is you folks.

**Mr. Holliday:** Can we hear from Toni Corona?

**Mr. Jones:** I know you're talking about everything with the County Board and the Health Department, but what about businesses like childcare? Because this will play in big if people do go back to work. I mean, do we supersede DCFS because that's who gives the licenses to childcare providers. I mean, can we tell them it's ok to open up? I mean, that's going to be a big part of it.

**Mr. Devore:** I would love to talk to Mr. Gibbons in a private conversation about how to protect the people in this county and their interests. If this Board chooses, with his advice, to act in a way that it feels is in the best interest of your people, and if the state agencies want to start interfering with the liberty interests of your people, and Mr. Gibbons believes that that's not right, I'm quite certain he knows how to address that.

**Mr. Prenzler:** That was a very good question. Any other questions from county board members?

**Mr. Chapman:** It seems to me that our guest is talking to us about fundamental rights, travel, assembly, interstate commerce, and local commerce, and the exercise of our religious belief and he's telling us that the state governor doesn't really the right to abnegate those rights, and that he can for 30 days do certain things but he cannot craft regulations with the force of law. What I hear him saying is that, only legislatures or county boards with the power can do those sorts of things. Given his clients, and I would like to know how many clients he has or whatnot, not who they are...

**Mr. Devore:** I can't say that, sir, I'm sorry.

**Mr. Chapman:** ...we shouldn't really be delegating these authorities to the governor, because it's not his to have in the first place.

**Mr. Devore:** I almost couldn't have said that any better, sir.

**Mr. Chapman:** Now, the other thing I hear and let me check this out with you, sir, is that you're also concerned that the state and or the governor and or the legislature, not enact laws that interfere with personal liberties or rights or the Bill of Rights to the natural laws that is given to us by God, if you're a spiritual person...

**Mr. Devore:** I am very strict, yes, sir.

**Mr. Chapman:** ...and prescribed punishments for that. They really can't supersede our constitutional rights.

**Mr. Devore:** I again, on behalf of my clients...

**Mr. Chapman:** Is that what you're saying?

**Mr. Devore:** What I'm saying is that, if Mr. Gibbons reads the Supreme Court authority, I think you will find that your liberty interests and what I'm here on behalf of my clients and advise my clients, liberty, interest at time must yield to the overall good of the health of the people but it can only be done with due process with real facts, not just because less people might get the disease, that's all I'm saying.

**Mr. Prenzler:** Very good, any other questions from county board members?

**Mr. Chapman:** My last thought, thank you, Chairman, was is that people have brought up specific here like child care and salons and schools and all like that, and that's where the rubber meets the road and that's

stuff we would have to figure out. At least, that's what I hear Mr. Devore saying. Is that accurate, sir? That's my last question.

**Mr. Prenzler:** That's right, we would have to figure that out. Ms. Dutton?

**Ms. Dutton:** Thank you. I appreciate our guest coming and telling us all this information. I had hoped this meeting would be more about us getting to advocate for businesses that we've spoken to who want to reopen and their plans to reopen and the steps that they're going to take if they're allowed to reopen. I appreciate this attorneys knowledge that he's giving us, but it's clear that we can't really act and do anything unless we have our state's attorney's opinion and their wisdom on what to do here and I really appreciate them working as quickly as possible to get these answers for us so we can act quickly as a Board, because I know our County is eager to get reopen. I know sports organizations want to start up in the summer. I know salons want to get going, childcare needs to get up and running so people can go back to work, myself included. So, I know we don't have a lot of time here and I know this will get extended tomorrow but I just want to urge Mr. Gibbons and Mr. Ezra and the State's Attorney's Office to help us in any way so we can know how to act as a Board.

**Mr. Prenzler:** Excellent point, I want to give other county board members the opportunity to talk. Mr. Madison?

**Mr. Madison:** With regards to regulation and opening up in a smart way, say a low percentage of store occupancy and things like that. Do you have any outside advice, experience? Say 25% store capacity for the 2 weeks and 50% after that. Do you have any advice on those types of regulations?

**Mr. Devore:** Once again, I would say that those things that you raise and those possible scenarios are decisions for your Board. Whether or not those might comport to my client's interest is a tricky question but I will say this, if Mr. Ezra, who I know is good man, and as a state's attorney, would like my insight for what it's worth to the people in Madison County, I'm available 24 hours a day, seven days a week until this gets solved for the people in Madison County, and I can provide them with any information that I have that they think is useful.

**Mr. Prenzler:** Very good, any other county board members, any questions? Mr. King, did I see your light come on?

**Mr. King:** Yeah, I got a question. Now, if a locality, say a municipality or whatever would have their own health department, now, are they legally able to make their own decisions?

**Mr. Devore:** I would direct Mr. Gibbons to the case of Supreme Court I decided which I believe would suggest to him that if certain municipalities have enacted their own local municipal boards of health, that they would have some of these same flexibilities that of county boards. I'm not giving you that opinion, but I think Mr. Gibbons may find that if he looks.

**Mr. Prenzler:** Any other questions or comments? If not, I would gladly have Director, Toni Corona. Director Corona, do you have any questions?

**Ms. Corona:** I have no questions, thank you.

**Mr. Prenzler:** Ok, any other questions or comments from the county board? Yes, any questions from our State's Attorney? I just wanted to make sure we had enough time for county board members. Any questions or additional comments from our State's Attorney's Office?

**Mr. Gibbons:** I was just curious about, Mr. Devore talked about presenting across the state, and I'm just wondering, you know, to kind of benchmark what kind of results he's had, whether there are boards that are acting now or have taken specific action or pass resolutions or anything consistent with that, and if he has copies of those, if he could send those to us that we can review them.

**Mr. Devore:** Well, let's do this, Mr. Gibbons, I again, I can't disclose my clients, but I will tell you on this open meeting, that I have probably 15 or 20 counties across southern Illinois right now where I've been taking efforts, client by client, situation by situation, which is a little different than my efforts here today on behalf of a bunch of clients to try to just talk to you directly. Because the counties that I've been successful for my clients, what's happening is when I put forth the proper documentation, which again, Mr. Gibbons, we can talk about it all you want, the county boards of health are not trying to take action to close these businesses down to say they are a public health risk. The state's attorneys are going from what I've been told, I've had state attorneys tell me, sir, I can't prove that business as a public health risk under the Department of Public Health Act. I'm not going to take action. My clients are then opening their businesses free of these local health departments exercising authority. I've not had one yet take this action into a courtroom, if that means anything to you.

**Mr. Prenzler:** Very good, Mr. Holliday, did you have any questions yourself? I certainly didn't mean to push you off, but I wanted to let all county board members first have opportunities to speak. Mr. Holliday? Well, I think we only have about five minutes left and the purpose of this meeting was really to talk about us the Board of Health and what we can do and what we cannot do. Any other questions regarding that topic? Yes, Mr. Madison?

**Mr. Madison:** It's not exactly regarding that...

**Mr. Holliday:** I do.

**Mr. Prenzler:** Mr. Holliday, is that you?

**Mr. Madison:** No, it's Mr. Madison.

**Mr. Prenzler:** I'm sorry.

**Mr. Madison:** Can you hear me?

**Mr. Prenzler:** Yes.

**Mr. Holliday:** Yes, I would like to hear from Toni Corona. I mean, she would have more expertise for what our County Board of Health is able to do.

**Mr. Prenzler:** Mr. Holliday, I believe Ms. Corona said that she had no questions. Ms. Corona, do you have questions before we go on?

**Mr. Holliday:** It wasn't a question, it was a comment about what we are as a Health Department and Board of Health.

**Mr. Prenzler:** Well, I asked Ms. Corona if she had any questions, and she said she did not. Ms. Corona, did you have any questions? Otherwise, I'll go to Mr. Madison, Mr. Madison, go ahead.

**Mr. Madison:** Thank you, sir. I just wanted to say that I've gotten a lot of calls from friends, family, ex-military, military, people that are calling and saying that the governor's actions aren't legal, he doesn't have

this kind of power. Everybody's done and in fact, a lot of people are hurting. A lot of people in government aren't hurting, they're getting paid. I understand they're working hard. There are a lot of people in hospitals, they're working, but we're going through a lot, we're not even sure what they're going through, exactly, but there's a lot of people that are really hurting, and we need to get this thing back. If we find a way to do that, I think we need to do that as soon as possible. Thank you.

**Mr. Prenzler:** Any other questions? I think we've got about three minutes. Hearing none, I'll just remind everyone... Yes, I'm sorry.

**Mr. McRae:** I just want to echo Madison's comments there. I think Madison County is anxious to get back to work and I think even in New York, they're talking about opening it region by region. The hardest hit city in the United States, by far, is talking about now regional, you know, opening that state up regionally. We're 300 miles away from Chicago, and I think the one size fits all approach that the governor has taken, just it's time to look at other alternatives and, allowing us the same freedoms that like St. Charles County and the state of Indiana have. I think, a regional approach. So, I commend your efforts and I appreciate you moving the bar forward a little bit here today.

**Mr. Prenzler:** We've only got about 2 minutes.

Mr. Holliday: The Governor has...

Mr. Prenzler: Yes, Mr. Holliday, go ahead.

**Mr. Holliday:** The Governor has a five step plan. Can you hear me?

**Mr. Prenzler:** Yes, we can.

**Mr. Holliday:** The Governor has a five step plan.

**Mr. Prenzler:** Yes, Mr. Holliday, go ahead.

**Mr. Holliday:** Yeah, he has a five step plan where we can start opening up as long as we comply.

**Mr. Prenzler:** Mr. McRae, if you could please let Mr. Holliday speak. Mr. Holliday, go ahead.

**Mr. Holliday:** That's all I had to say was that as a region, we have a plan to be reopening. He has a plan to do that as long as we comply with him. So, he's looking at southern Illinois opening back up.

**Mr. Prenzler:** Very good. I think our time is up today.

**Mr. Holliday:** Mr. Wesley, do you have anything to say?

**Mr. Prenzler:** Mr. Wesley, would you like to say anything?

**Mr. Wesley:** Yes, I would just like to piggyback on Ms. Dutton's question to the State's Attorney, and I'd like to know that whether or not the State's Attorney can give us a window or a schedule on when he can review this stuff and look at bringing some of these businesses back to work, if possible. Again, I know he's got a lot of stuff to review, but could the State's Attorney tell us when he thinks he can have some kind of a review done and an opinion back to us?

**Mr. Gibbons:** Mr. Wesley, thank you. First of all, I'd appreciate if someone would forward the materials that were presented today. You know, we had a meeting this morning with yourself and the Chairman and none of those materials were presented or given to us and we weren't advised that any of that would be presented.

**Mr. Prenzler:** I'm sorry, I did not receive those materials. So, that just didn't happen.

**Mr. Gibbons:** Ok, so, yeah, so they weren't even in discussion this morning. So, you know, I'm looking forward to Mr. Devore passing that along to us, so that we can review those cases. We've certainly been working directly with the Health Department on these issues and our local first responder agencies on these issues. I don't know the breadth of the materials, he was mentioning something in the range of hundreds of pages of documents so we'll certainly have to have adequate time to go through all those things and address those if that's what you're asking for, as well as, you know, our continued work going through the health code and the reviewing of the Governor's proclamations or orders or whatever they may be. So, at this point, I can't give you an estimate because I haven't seen the materials we're being asked to review. So, you know, I can certainly report back to you once we have that we can get some sort of a reasonable estimate on how long that'll take. But at this point in time, I can't give an estimate on something I've never seen. So, I apologize for not being able to give you some expectation, but I just, I don't know exactly all of what it is that we're being asked to look at.

**Mr. Prenzler:** I want to thank everyone for your time, now times up. I do want to emphasize that this is a very difficult, very complicated issue and what we're trying to do here is truly balance our sincere concern for public health and safety with both economic issues and our constitutional rights. It's not easy, I want to thank everyone for this meeting and we will have another meeting tomorrow at three o'clock. Thank you.

\* \* \* \* \*

Mr. Madison moved, seconded by Mr. Wesley, to adjourn the special meeting. **MOTION CARRIED.**

ATTEST:       Debbie Ming-Mendoza  
                  County Clerk

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