

**Health Officer, County, Jurisdiction Of. Board of Health,  
Local, Jurisdiction Of.**

Under Chap. 110, Laws 1907, a local health officer has jurisdiction over sanitary affairs when within the corporate limits of his town or city. The county health officer has jurisdiction of sanitary matters over all parts of the county outside the corporate limits, and also inside of corporate limits where a town of less than five thousand inhabitants places itself under his jurisdiction.

Helena, Montana, April 20, 1908.

Dr. Thomas D. Tuttle,  
Secretary of State Board of Health,  
Helena, Montana.

Dear Sir:—

Your letter of the 13th inst., requesting opinion upon the following

subject, received:

In incorporated towns and cities, having a local board of health and a local health officer, is it the duty of the local health officer to look after the sanitary condition of the territory surrounding the corporate limits of such town or city, situated within the three-mile limit thereof, or does such duty devolve upon the county board of health and county health officer?

Division 42 of Section 4800, Political Code, as amended by the Laws of 1897, page 203, gives an incorporated town or city authority to regulate the erection of slaughter houses, breweries, distilleries, livery stables, tanneries, blacksmith shops, planing mills, soap factories etc., within the city or town, and to prohibit any offensive and unwholesome establishments within the city or town limits, or within three miles thereof.

Subdivision 45 of the same section, as amended, provides for the establishment of pest houses without the limits of the city, in case of necessity, and confers authority upon the municipality to do all other acts which may be necessary for the protection of health and to prevent the spread of infectious and contagious diseases within the city or town.

Subdivision 44 of the same section, as amended, reads as follows:

"To provide for a board of health and to prescribe its powers and duties, and when such board of health is provided, same to have jurisdiction within the city or town limits and within three miles thereof."

This latter subdivision would appear to give the board of health when provided for general jurisdiction within the three mile limit, and by such subdivision authority was conferred upon the municipality by the legislature to provide for a local board of health. Since then, however and by Chapter 110 of the Laws of 1907, the legislature has seen fit to make direct provision for the organization of local boards of health in incorporated cities and towns, and in so far as the provisions of said Chapter 110 are in conflict with said Subdivision 44 of said Section 4800, as amended, the said Chapter 110 must prevail. Section 11 of said Chapter 110 provides that in incorporated cities and towns with a population of five thousand inhabitants or more that there shall be organized a local board of health, and in the event that the municipal authorities fail to appoint such board of health within thirty days after having been notified of such requirement by the secretary of the state board of health, then the state board may appoint a health officer for such town or city. Such section provides further that any incorporated city or town of less than five thousand inhabitants may, by written notice to the state board of health, and to the county board of health, place itself under the care of the county board of health, "in which case the county health officer, as hereinafter provided, shall have the same authority within the incorporated limits of such town as he has in the county outside of corporate limits; provided that such incorporated town shall pay all expenses incurred in enforcing sanitary measures and quarantines within its corporate limits.

Section 19 of said chapter provides for the organization of county boards of health, and provides further that the county health officer shall have the same powers and perform the same duties in the county of his appointment, outside of the limits of incorporated towns or cities, as are heretofore provided for a local health officer within the limits of a town or city.

Thus it will be noticed that said Chapter 110 provides for both local and county boards of health, and restricts the powers and duties of a local health officer to the limits of the incorporation, and those of a county health officer to the county outside the corporate limits except in those cases where a town has less than five thousand inhabitants, and by petition is placed under the control of the county health officer.

You are therefore advised that it is the duty of the county health officer to take exclusive charge and control of all sanitary matters outside of corporate limits, except in those cases in which a town of less than five thousand has placed itself under his control; provided, however, that the town council has authority by ordinance to regulate the different kinds of business mentioned in said Division 42 of said Section 4800, and also to establish pest houses, and take other necessary measures against the spread of infectious or contagious diseases when there is an epidemic of the same in the community.

Very truly yours,

ALBERT J. GALEN,

Attorney General.