

initiative of the local authorities of the towns and cities, but on occasion, it has been necessary for the State Board of Health to remind these local authorities of their obligations in the circumstances.

"Since the authority of the State Board of Health has now been questioned by the City Manager of a Montana city, we would appreciate a ruling by you, stating and delineating our authority."

The duties of the State Board of Health with regard to approval of city sewage disposal systems are set forth in Section 2648, Revised Codes of Montana, 1935:

"Said board shall consult with and advise the authorities of cities and towns, and persons having, or about to have, systems of water supply, drainage, and sewerage, as to the most appropriate source of water supply, and the best method of assuring its purity, or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns, or persons which may be affected thereby. It shall also consult with and advise all corporations, companies, or persons engaged or intending to engage in any manufacturing or other business, whose drainage or sewage may tend to pollute any inland water, as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. Cities, towns, and all other corporations, companies, or persons shall submit to said board, for its advice and approval, their proposed system of water supply, or of the disposal of drainage or sewage, and **no city, town, or person or company shall proceed to build or install or enlarge or extend any system of water supply, drainage, or sewage disposal, without first obtaining the approval of the state board of health.** In this section the term 'drainage' means rainfall, surface, and subsoil water only, and 'sewage' means domestic and manufacturing filth and waste." (Emphasis mine.)

The emphasized portion of the above quoted statute is clear, unambiguous and self-explanatory.

Opinion No. 151.

State Board of Health—Board of Health—Cities—Towns—Water Supply—Drainage—Sewage Disposal.

Held: No city, town, person or company shall proceed to build or install or enlarge or extend any system of water supply, drainage, or sewage disposal without first obtaining the approval of the State Board of Health.

April 29, 1946.

Dr. B. K. Kilbourne
Executive Officer
State Board of Health
State Capitol
Helena, Montana

Dear Dr. Kilbourne:

Your problem is best stated by quotation of your recent letter:

"It has been the practice of the Montana State Board of Health, for many years, to call for and review plans of sanitary sewers to be built as extensions to municipal sewer systems in the cities and towns of the state. We have assumed that the authority is vested in the State Board of Health by section 2648 of the Revised Codes of Montana, 1935.

"Until recently, there has not been a question raised by local authorities as to the desirability of, or authority for, this action. In the majority of cases, the plans are sent upon the

The Montana Supreme Court in the case of *Campbell v. City of Helena* (1932) 92 Mont. 366, 379, 16 Pac. (2d) 1, 2, had occasion to comment on the scope of the powers and duties of the State Board of Health:

"A careful reading of the statutory provisions respecting the powers and duties of the State Board of Health (Secs. 2641-2657, Rev. Codes, 1921), and of their subordinates, the county and city health officers (Secs. 2444-2502, Id.), discloses that, for the protection of the public health, these officials are given 'general oversight and care' of the sources of all water supplies for domestic use and of the installation of water systems and sewer systems as affecting such supplies, and are commanded to consult with and advise the city authorities in such matters." (Emphasis mine.)

Section 2648, *supra*, commands that cities and towns first obtain the approval of the State Board of Health before building, enlarging, installing or extending systems of sewage disposal. The *Campbell* case, *supra*, states the statutes of Montana command the State Board of Health to consult with and to advise city authorities in such matters. The proposition is therefore clear: The State Board of Health and cities and towns within Montana must operate and function together in the construction, installation, enlargement or extension of sewage disposal systems.

It is therefore my opinion no city, town, person or company shall proceed to build, install, enlarge or extend any system of water supply, drainage or sewage disposal without first obtaining the approval of the plans and the project by the State Board of Health.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General