

**State Board of Health, Rules and Regulations Of—Local and  
County Boards of Health, Reports Of.**

Under the board of health system in this State, as provided by House Bill No. 104, Laws of 1901, p. 81, the state board of health is given general supervision of the public health of the State and authorized to make and enforce each needful rule and regulation respecting the public health. A rule and regulation requiring local health officers to make reports out at stated intervals is reasonable, proper and necessary to enable the state board of health to perform its inquisitorial and advisory work in accordance with the provisions of said act. There is no provision in the law for the publication of the rules and regulations made by the state board of health, but as they tend to restrict the exercise of personal rights, notice thereof should be given as a condition precedent to their enforcement. After they are properly promulgated by publication, and otherwise, so that local and county health officers can be charged with knowledge thereof, they can be enforced either by mandamus, removal of the health officer from office, or criminal action against him for a misdemeanor.

Helena, Montana, May 8, 1905.

Thomas D. Tuttle, M. D., Secretary, State Board of Health, Billings, Montana.

Dear Sir:—I am in receipt of your favor of the 4th instant, making request upon this office for opinion upon the following question:

Can a rule or regulation be enforced, made by the state board of health, requiring local and county health officers to make regular reports to the state board of health, setting forth all cases of contagious diseases, if any, that have been reported during the month, and if so what are the proper steps to be taken for the enforcement of such rule or regulation?

I am of opinion that such a rule or regulation can be enforced. Under the express provisions of Section 3 of House Bill No. 104, Laws of 1901

page 81, the state board of health is authorized and empowered to adopt "all needful rules and regulations," and one of the chief, foremost and most needful rules or regulations which it should make, in order to enable it to properly perform its inquisitorial and advisory work, is the requirement of proper reports from county and local health officers.

Under the act above referred to the state board of health has cognizance of all matters touching the interests of the health and lives of the citizens of the state, and it is directed to make special study of vital statistics and the cause of disease, and especially of epidemics, and generally the condition of public health. The state board of health is authorized and required to make investigations and to secure data respecting public health and to make annual reports to the governor, and it is clearly the intention of the law that it be vested with general supervision of the public health system throughout the State.

In order to enable it to secure necessary information and to perform the duties imposed upon it by law, it must have the supervision of county and local boards of health, and one of the most needful regulations which it should make, and is authorized and empowered to make, is the requirement that local and county health officers report to it as it may prescribe.

When you have made such a rule or regulation, I would advise that a copy of same be furnished every county and local health board and health officer in the state, and that it be published in one or more newspapers for such length of time as the board may direct, so that all may be given legal notice and made familiar therewith.

There is no direct provision for the giving of notice of such regulations or the publication thereof, but as they tend to restrict the exercises of personal rights, notice is essential as a condition precedent to their enforcement. (See Sec. 87, Parker & Worthington on Public Health and Safety.) And as I have stated to you in a former opinion, bearing date March 15, 1905, amply supported by authority, there can be no question as to the right of the legislative assembly to confer upon the state board of health the right to make reasonable rules and regulations and enforce same as law. See *Blue vs. Beach*, 80 Am. St. (Ind.) 195.

As to the second phase of your question—namely, the steps to be taken for the enforcement of the law, I will say that you have three remedies; first, mandamus proceedings; second, removal of the health officer from office; and, third, criminal action against him for a misdemeanor.

1. Section 1961, Code of Civil Procedure, provides, on the subject of the remedy by mandamus, as follows:

"It may be issued by the supreme court or the district court, or any judge of the district court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person."

2. Section 1227, Penal Code, provides:

"In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers—state, county, city, town, or township—where it is not so expressly provided, they may, in the discretion of the court, be removed from office."

3. And Section 35, of the state board of health law above referred to, provides that any person violating the provisions of the act shall be guilty of a misdemeanor, and shall, on conviction, be fined not exceeding one hundred dollars or by imprisonment not exceeding six months, or by both fine and imprisonment, in the discretion of the court, and the act itself provides, as a part thereof, for the making of reasonable rules and regulations on the part of the state board of health.

In the event of failure on the part of any county or local board of health or health officer to comply with the rules and regulations of the state board, proceedings should be instituted by the county attorney of the county wherein any such offending health officer or officers reside.

Hoping that the above opinion satisfactorily answers the questions you present, and that it may be of assistance to you in the conduct of the work imposed by law upon the state board of health, I remain,

Yours respectfully,

ALBERT J. GALEN,  
Attorney General.

P. S.—In addition to what I have hereinabove said respecting the duty of county and local health officers to make reports to the state board of health, pursuant to the rules and regulations of said board, you will notice that the law itself imposes a duty to so report upon such health officers. (See Sec. 16 and Sec. 33, board of health law.)

A. J. G.