

County Health Officer, Authority to Incur Expenses.

Under the provisions of laws of 1901, page 80, a County Health Officer has authority, independently of the County Commissioners or County Board of Health, to incur reasonable, necessary and legitimate expenses for the suppression or prevention of conta-

gious or infectious diseases, which should be paid as other county charges.

Helena, Mont., Jan. 20th, 1906.

Honorable H. S. Greene, County Attorney, Great Falls, Montana.

Dear Sir:—Your letter of the 3rd inst. received, in which you state that a case of scarlet fever was discovered in your county and that the patient was, by order of the county health officer removed to the detention hospital of the county; that this order was made by the health officer without first consulting the balance of the county board of health, or the board of county commissioners, and that the health officer also obtained a nurse, and requested the county auditor to send the necessary provisions to the hospital.

An opinion of this office is requested upon the following questions in connection with this matter:

1. Whether the local health officer had the authority, under the laws of 1901, to order the removal of the patient at the expense of the county.
2. Whether or not the charges for the maintenance of the patient are proper charges and if they should be paid by the county.
3. Whether or not the nurse's bill is a proper charge against the county, and
4. Whether or not the county is responsible to the county physician for physicians fees in attending the patient?

In construing and applying the law in answer to the above questions, they will be considered without segregation because of the sameness of the law and reasoning applied in formulating the conclusions with reference to either of them.

The controlling provisions of the law. House Bill No. 104, Laws of 1901, are Sections 9, 10, 11, 13 and 17, and by reference to said sections it will be found that the County Board of Health consists of the Board of County Commissioners and one qualified physician appointed by said Board; that the County Board of Health, so constituted, have power and authority to establish for the county or any part thereof, such reasonable sanitary rules and regulations as may be necessary to prevent an outbreak of infectious diseases; that it has power and authority to declare and enforce quarantine and to confine a person afflicted with or likely to spread contagious or infectious diseases, in a suitable detention hospital; that all necessary expenses incurred by the Board of Health in enforcing the provisions of Sections 9, 10 and 11 of the Act, constitute a proper County charge and must be paid out of the County treasury from the general fund; and further, that the county health officer may take all proper steps for the restriction or suppression of diseases dangerous to the public health, and the necessary and legitimate expenses thereof, the Board of County Commissioners are authorized to incur and pay, as other County charges.

It is therefore apparent that either the Board of Health or the Board of County Commissioners may incur the expenses necessary for the protection of the public health; but the question arises, can the county health officer incur such expenses independently

We are of opinion that he can within reasonable limitations and

restrictions, for by the express provisions of the law, authority is conferred upon him, and he is required, to immediately investigate and take all proper steps for the restriction or suppression of diseases. It certainly could not have been intended by the legislature, that he should perform such duty without incurring expense, or that when he had so performed his duty that his reasonable necessary and legitimate expenses thus incurred should not be paid as other county charges.

This construction is fully warranted by the provisions of said Section 17, considered with reference to the other provisions of the Act.

The law seems to make no distinction, with reference to such expense, between paupers and other persons.

As a precautionary measure, to avoid question, it would be well if a rule or regulation were adopted by the County Board of Health conferring upon the county health officer authority to act for and in the place and stead of such board under certain conditions, and directing him not to go beyond the authority so conferred.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.

Note:—See case of Christian vagen vs. Commissioners, 84 Pac., decided March 26, 1906.