

Board of Health, Pollution of Streams.

The State Board of Health may prohibit the sale of unhealthy dairy products, from whatsoever cause arising, under the law, but it is not within its power to interfere so as to prevent trespass by one private party upon the rights of another, even though such trespass brings about the unhealthy and unwholesome condition.

March 14, 1905.

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

Dear Sir:—I am in receipt of your favor of the 12th, enclosing letter of I. Pearson, of Mitchell, Montana, wherein you ask opinion of this office as to the powers of the State Board of Health to prevent pollution of the waters of a stream by the driving of sheep to water at a point above the premises occupied by a man who is engaged in the butter business, such pollution of the waters affecting the milk and butter business of the party complaining.

It is my opinion that the State Board of Health cannot maintain an action to determine the prior right to the use of water as between private parties, nor can it maintain an action to prevent one citizen from trespassing upon the private right or property of another citizen. If dairy products are unhealthful, within the meaning of the law, their sale may be prohibited from whatsoever cause such unhealthful conditions arise, but if any one is so using water as to invade private rights and injure private business he may apply for an injunction, for he is the real party in interest and every action must be prosecuted in the name of the real party in interest. (Sec. 570, Code of Civil Procedure.)

Respectfully yours,

ALBERT J. GALEN,

Attorney General.