

**Local Board of Health. Board of Health, Local. Railroads, Failure to Comply With Rules of Board of Health. Residence, Local Board of Health Members. Secretary, Local Board of Health Need Not Be Physician.**

1. Where a railroad fails to comply with rule of Board of Health actions should be instituted under Section 15, Chap. 110, Laws of 1907.

2. Where persons appointed as local Board of Health are absent from the city for ten days, or do not qualify or act as such, a vacancy is thereby created.

3. The secretary of a local Board of Health need not be a physician when the duties required of him are only such as may be performed by persons other than physicians.

Helena, Montana, October 29, 1907.

Hon. Thomas D. Tuttle,  
Secretary State Board of Health,  
Helena, Mont.

Dear Sir:—

I am in receipt of your favor of the 8th inst., in which you ask

official opinion from this office upon certain questions, which are here stated and answered in their order.

1. "The railroads have failed and neglected, after being repeatedly notified from this office, to comply with the rules of the State Board of Health prohibiting the sweeping of cars between stations, and requiring the placing of cuspidors in the cars, and keeping water-closets in cars in a sanitary condition. I have repeatedly called the attention of brakemen and porters to the rules of the Board relative to sweeping cars between stations, and they have invariably informed me they have orders to do so from the officials of the company.

What is the proper method to proceed in order that the rules of this Board may be enforced in this matter?"

In answer to this question you are advised that the proper method of procedure is to get a specific case and file a complaint against the offending railroad company or companies under the first paragraph of Section fifteen, Chapter 110, Laws of 1907, which reads as follows:

"If any person or corporation shall neglect or refuse to comply with any written order of a local, county or State health officer, made and promulgated by either of them under this act, within a reasonable time, to be designated in the notice, such person or corporation shall be guilty of a misdemeanor."

Your next question is:

2. "On June 1st. I received notice from the mayor of the City of Helena, that on the 20th. day of May, a Board of Health for the city of Helena had been appointed, consisting of the following members: L. H. Fligeman, M. D., John S. Tooker, and E. R. Tandy, and that said Board elected L. H. Fligeman President and, John S. Tooker, Secretary, and the health officer for the city of Helena. I am reliably informed that Mr. Tandy has never qualified as a member of said Board of Health. Dr. Fligeman has been out of the State for about five months thus leaving only one member of the Board in the city. The law requires that each board of health shall hold meetings quarterly.

In this matter I am directed to inquire, 1st, has the City of Helena a Board of Health as required by the laws of our State? 2nd, does this law as a whole require that the health officer shall be a physician? 3rd, is Mr. Tooker, who is not a physician, legally a health officer as required by law of this State?"

Under the above statement of facts, and answering the first question thereunder, you are advised that the city of Helena, through the action of its Mayor on the 20th day of May of this year, in appointing a board of health for the City of Helena, complied with the law. This action, however, has been nullified because of the absence of Dr. Fligeman, the physician appointed on such board, and the failure of Mr. Tandy to qualify.

Section 4758 of the Pol. Code provides, among other things, that:

"If any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant."

Therefore, this matter should be, by you, brought to the attention of the City Council, in order that they may take such action as is necessary in the premises.

You are therefore advised that under the circumstances and conditions above set forth the City of Helena has not a board of health as required by the laws of our State.

Answering your next query:

"Does the law as a whole require that the local health officer shall be a physician?"

Section 11, Chap. 110, Acts 1907, provides that the "Local Board" of Health of a city shall consist of three members one of whom shall be a physician; and that one member of the Board shall be elected as secretary. But it does not provide that the physician shall be such secretary as is the case with county boards of health. (Sec. 19.).

The duties of the secretary of the local board as defined in Section 10, are strictly clerical and ministerial.

Section 14 provides that "the local health officer shall make sanitary inspection \* \* \* shall as secretary of the local board of health \* \* \* order the destruction, prevention and removal \* \* \* as directed by the local board of health" etc.

While this section seems to indicate that the secretary is the local health officer, yet it does not authorize him to act unless the approval of the local board of health or of the secretary of the State Board of Health is first obtained as is provided by said section 14.

Under the provisions of the statute the duties of the secretary of the local or city board of health may be confined to matters strictly clerical and ministerial, or executive, in the sense of enforcing orders of the Board. And when his duties are so confined it is not necessary that he be a physician, for he can "inspect" and report the result of his investigation to the board, and the board can then take such action as it deems proper. But if the local board requires it secretary to investigate and pass upon contagious and other diseases, then he must necessarily be a physician in order to enable him to discharge the duties of his office, but there is nothing in the act to prevent this duty being performed by the physician of the Board, although he is not the secretary. The discharge of the clerical and ministerial duties of the board may require more time than the physician can devote to such matters.

The law does not require the secretary of the local board of health to be a physician, and we cannot read this provision into the law.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.