

**County Board of Health, Authority to Make Rules Governing Expenses. County Health Officer Is Subordinate to County Board of Health.**

1. The county board of health has authority to make reasonable rules for restricting the expenses incurred and made by the county health officer.

2. Any member of the county board of health may make inspection of probable unsanitary conditions for the information of the board.

Helena, Montana, Jan. 13, 1908.

T. D. Tuttle, Esq.,  
Secretary, State Board of Health,  
Helena, Montana.

Dear Sir:—

I am in receipt of your favor of the 7th inst., submitting the questions:

“Has the county board of health the authority to instruct a county health officer not to make any investigations that will necessitate traveling, or cause any expense to the county, unless instructed so to do by the board?”

“Has any member of the county board of health, other than the health officer, authority to make inspection of probable unsanitary conditions?”

The County Board of Health is established by Section 19, Chap. 110, Laws of 1907, and consists of the Board of County Commissioners, and one physician appointed by such Board. The power and authority of the board of health, as such, are enumerated in the various sections of the Act, and especially in sections 16 and 21. The duties of the county health officer are also enumerated in various sections of the Act, and especially in sections 14 and 16. The county board of health must hold regular quarterly meetings “and at such other times as they may deem necessary \* \* \* they shall establish such sanitary rules and regulations for their own county, for the prevention of the spread of the disease as they may deem necessary.” The county board of health, by the provisions of Section 16, are given authority to abate nuisances, to guard against the introduction of communicable diseases, to establish and maintain hospitals, to require the isolation of persons or things infected with or exposed to infectious or contagious diseases, and to prevent all intercourse or communication with or use

of infected premises, places or things. The board by the appointment of a health officer does not divest itself of the authority given it by law, if such appointment had that effect, there would no longer be any excuse for the existence of the board. The health officer is an active member of the board, but he is not superior to the board, and he is presumed to receive compensation "commensurate to the work devolving upon him."

The rules established by the board must, of course, be reasonable, and are subordinate to the rules established by the State Board of Health. Whether such rules or orders are reasonable could only be determined by the particular facts of each case. An order to the effect that an authentic report of the prevalence of a dangerous, contagious disease should not be investigated until the board had considered the matter at its next quarterly meeting would be unreasonable, but an order to the effect that extraordinary expense should not be incurred until the board, or the members thereof, had first been consulted, would not be unreasonable, nor would an order that no general and expensive investigation, relating to sanitary matters, not demanding immediate action, should be made, until action had been taken by the board would not be unreasonable, provided the board took action within a reasonable time at either a regular or special meeting. The Board, whether sitting as a board of health or as a board of county commissioners, must keep in mind the financial welfare of the county. The law does not require the board to grant to one of its members exclusive authority, and the board cannot escape responsibility by attempting so to do. Any member of the board has authority to make inquiry or inspection of alleged unsanitary conditions for the information of the board, but it seems to be the intention of the law that a quarantine should be established by the county health officer and "in accordance with the rules and regulations of the State Board of Health, and maintained in accordance with such rules and regulations." (Sec. 16).

The work of county boards of health, as well as of county health officers, are under the general supervision of the State Board of Health (Sec. 2) and any errors committed by the county board which would be dangerous to the public health could be corrected by the state board.

In these matters so much must be left to the good judgment and discretion of the local or county board, and to the members thereof, who are presumed to have some knowledge of conditions existing in their respective localities, that it is probable that no particular rule could be made applicable in all counties. Both the board and health officer are presumed to act within reason and discretion for the conservation of the public health, and likewise for the protection of the financial interests of the county, and for a health officer to recover expenses incurred by him in making an investigation contrary to the order of the board, it would be necessary for him to prove the actual necessity of such investigation and the incurring of such expense.

Very truly yours,

ALBERT J. GALEN,

Attorney General.