

State Board of Health, Power Of. Sewer System, Control of by Board of Health. Board of Health, Authority of to Act Without Complaint.

1. The state board of health has authority to act on its own initiative in making rules or prohibitions relative to a sewer system in a city or town.

2. In dealing with a sewer system established at the time of the enactment of Chapter 110, Laws 1907, the board should proceed under the provisions of Chapter 177, Session Laws 1907.

Helena, Montana July 6, 1908.

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

Dear Sir:—

I am in receipt of your favor of the 2nd inst. submitting the question:

“Should the state board of health proceed under the provisions of Chapter 110, Session Laws 1907, or under the provisions of Chapter 177 of said laws, in considering ‘the question of a sewer system for the city of Miles.’”

And also your verbal inquiry as to whether the board had authority to make investigations and promulgate orders without the complaint mentioned in Section 8 of Chapter 177, being filed.

It appears that the sewer system in question was established long prior to the enactment of either of the chapters above referred to, but that the city now desires to change the place of discharge from the swamp now used for that purpose to the Yellowstone river.

Section 36 of said Chapter 110, relating to this subject, refers to sewer systems “hereinafter contemplated,” and as the sewer system in question was constructed prior to the enactment of that chapter, the provisions of said Section 36 cannot apply. Said Chapter 177 is more specific in its application, for Chapter 110 contains the general powers and duties of the state board of health, while Chapter 177 deals with special subjects, among them being “the prevention of pollution of public water supplies used for domestic purposes,” and authorizes the adoption and promulgation by the state board of health of orders, rules and regulations relating thereto.

Section 6 of Chapter 177 contains the prohibition, and that section and the preceding sections specify the method of procedure, hence the proceedings of th board should be under th provisions of said Chapter 177.

Section 2 of said Chapter 110 and also Section 2 of said Chapter 177 confer upon the board the authority to proceed in such matters upon its own initiative without waiting for the filing of the complaint mentioned in Section 8 of Chapter 177. If the board failed to act upon

its own initiative, then the filing of the complaint mentioned in said Section 8 would compel action on the part of the board.

Yours very truly.

ALBERT J. GALEN,
Attorney General.