

**Boards of Health, Organization Of. Local Boards of Health,  
Organization Of. County Boards of Health, Organization Of.**

1. Local and County Boards of Health organized before the passage of Chap. 110, Laws 1907, must be reorganized under the new law, except where the new law is a mere continuation of the old law.

2. Where either a county or city have entered into a contract with a physician for a definite time at a definite compensation, Chap. 110, Laws 1907, would not have the effect of nullifying that contract.

Helena, Montana, April 25, 1907.

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

Dear Sir:—

I am in receipt of your favor submitting for the consideration of this office the following question:

“Do local and county boards of health organized before the passage of House Bill 132, Tenth Legislative Assembly, (Chap. 110), continue to act under this law, or must boards of health reorganize under the new law?”

This Act of the Tenth Legislative Assembly, approved March 6th, 1907, specifically repeals the Act of March 15, 1901, creating a State

Board of Health. It also repeals all Acts and parts of Acts inconsistent with this Act. Prior to the enactment of this last law, county boards of health acted independently of the State Board of Health,

Sec. 2860, et seq., Pol Code.

*Yegen vs. Commissioners*, (Mont.) 85 Pac. 740.

But said sections, in so far as they conferred authority upon the County Board of Health to act independently of the State Board of Health, are in conflict with this Act of the Legislature of 1907, and are to that extent repealed hereby. And in so far as this latter law is a new enactment, and not a continuation of the old laws, it must be complied with in all its provisions, irrespective of the former existence of the old law. However, where the new law, is the same both in form and substance as the old law, it must be construed as a continuation of the old law, and not as an original enactment. Section 5 of the Political Code which lays down this rule of construction for the Code is but expressive of the common law rule of statutory construction.

Sec. 273 Lewis' Southern Stat. Construction.

It will be noticed that Section 19 of this Act of 1907, which provides for the creation of county boards of health, is the same both in form and substance as said Section 2860 of the Political Code; hence this new law is but a continuation of the old law, and all the existing county boards of health have to do in order to reorganize, is simply to comply with the new rules and conditions expressed in the later law.

County physicians are employed under contract usually for a definite and fixed time or term, and, to say the least, an act of the legislature should never be construed by implication to impair the obligations of a contract then existing. The same principle applies to the City Board of Health, in so far as it relates to physicians employed under contract by the City, City Boards of Health, under the recent Act, are referred to as "local boards." Section 11 of the 1907 Act provides the manner of appointing members of these local boards, and this provision should be complied with by cities.

Very truly yours,

ALBERT J. GALEN,

Attorney General.