

Smallpox, Duty to Quarantine. Quarantine, Liability for Failure to Establish. Health Officer, Liability for Neglect of Duty.

Under certain facts members of the Board of County Commissioners or the County Health Officer might be guilty of a misdemeanor for purchasing ticket and transporting a person who has smallpox. The county to which such person was knowingly transported should present a claim for the expense of caring for the patient, to the County Commissioners of the county whose primary duty it was to care for such patient.

Helena, Montana, Dec. 28, 1908.

T. E. Tuttle, M. D., Sec. State Board of Health, Helena, Mont.

Dear Sir:

I am in receipt of your letter asking for opinion as to what action should be taken upon the following statement of facts:

"On or about the 7th of this month, a man by the name of Julius Mitchell, appeared before the Board of County Commissioners of Ravalli County, and made the following statement: He was in Missoula and went to Dr. Pease for an examination. Dr. Pease said that he believed that he had the small-pox, and sent him to the Board of County Commissioners, who bought him a ticket and sent him to Hamilton on the train. On arriving at Hamilton he found the City Marshall and told him his story. The City Marshall brought him to the County Commissioners who were in session and they sent him to the pest house, where it was found that he had a well developed case of smallpox. The Ravalli

County Board of Health do not propose to stand that kind of work. Kindly advise what steps to take. I called up Dr. Pease and found that he had gone to California. I talked to Mr. May, Health Officer of Missoula, and he said that he believed that the facts as above stated were true."

Section 1489 Revised Codes gives county boards of health power and authority to require the isolation of persons or things affected with or exposed to infectious or contagious diseases, and, if necessary, to furnish medical treatment and care for such sick persons at the expense of the county. Rules 1, to 10 of the rules of the State Board of Health makes it the duty of the county health officer, when he has reason to suspect any contagious disease exists within his district, to make a thorough investigation and if such disease is found to exist he shall then take such steps as may be designated by the laws of this State and by the rules and regulations of the State Board. And rule 9 expressly provides that when any county health officer has reason to suspect the existence of smallpox within his district he shall immediately investigate and shall at once place under quarantine any premises where smallpox is found to exist, together with all persons on such premises or who have been on such premises after the disease appeared.

Under the above law and rules it is clearly the duty of the county health officer and of the county board of health, when a person is found who has smallpox, or when the county health officer has reason to suspect has smallpox to immediately place such person in quarantine.

Section 1511 of the Revised Codes provides that:

"Whosoever shall knowingly violate any of the provisions of this Act, or any rule or regulation of any county, city or state board of health, made in accordance with the provisions of this Act, penalty for which is not herein specifically provided, shall be guilty of a misdemeanor."

Sec. 8525 of the Revised Codes also provides that:

"Every person who wilfully exposes himself or another infected with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor."

If the facts stated in your letter can be established by competent proof it is probable that a court would find the county commissioners had violated the law and were liable to punishment in the manner above mentioned.

There is another method whereby the commissioners of Ravalli County may test the legality of the action of the county commissioners of Missoula County, which would be as follows:

They could present a duly itemized bill to Missoula County, showing the expenses necessarily paid out by Ravalli County in quarantining and caring for the smallpox patient sent to their county by the county commissioners of Missoula County. If the county commissioners of Missoula County refuse to allow the bill Ravalli County could appeal to the dis-

strict court in the manner provided by law and thus have the matter settled by the court.

Very respectfully yours,

ALBERT J. GALEN,

Attorney General.