

**State Board of Health, Power of. Sewer, Water and Drainage System, Jurisdiction of Board Over.**

1. State Board of Health has power to prevent pollution of waters under provisions of chapter 177 and chapter 110, laws of 1907, and cities and towns should report to state board all sewer and drainage systems, that board may determine whether same will have the effect of polluting the waters named in the law.

2. The laying of a main or lateral, whether of a sewer or water system, may be the enlargement of a system or it may only be the completion of a system already determined upon, dependent upon the circumstances and facts of each case.

3. State board has authority, under its general powers to preserve the public health, and its jurisdiction extends to reservoirs, settling tanks, and all other matters and things which might injuriously affect the public health.

Helena, Montana, September 9, 1909.

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

Dear Sir:

I am in receipt of your communication in which you ask for a construction of the terms "enlarge or extend," as the same are used in section 1563, revised codes, relating to any system of water supply, drainage or sewage of any city or town; and, also, whether laying of laterals or mains or installation of storage reservoir or settling tank constitute such extension or enlargement.

The state law relating to the conservation of the public health seems to consist of two divisions: First, that which relates directly to the public health; second that which relates to preventing the pollution of water.

Chapter 177, laws of 1907, of which said section 1563 is a part, is entitled: "An Act relating to the prevention of pollution of public water supplies," etc. This entire chapter, as well as section 1509, revised codes, which is a part of chapter 110, laws of 1907, relate to the second division above named, and directly confers power upon the board to prevent the pollution of waters therein referred to. Under the provisions of said section 1563 the board has the right to be informed by cities and

towns as to the sewer or drainage system or water supply established or maintained, or to be established and maintained by such city or town, but only for the purpose of enabling the board to determine whether or not the waters used by said city or town are polluted, or whether the sewer or drainage system will pollute any waters as referred to in the act. When the city or town has once done this, it would not be necessary to submit for the approval of the board the laying of new mains or water connection unless the same had the effect of polluting some stream or lake, pond, etc., or of polluting the source of water supply used by such city or town. The laying of a main or laterals might not be the enlargement of a water or sewer system, but might only be the completion of a system already determined upon, or a means of distributing the water supply throughout the city or town. The circumstances and facts of each case must determine these questions.

Under the first division above named, the law confers upon the board ample authority to do anything that is necessary to the preservation of the public health, and their jurisdiction therefore extends to reservoirs, settling tanks, and to other matters and things which might injuriously affect the public health. But such power of the board comes from the general provisions of the law and not specifically from chapter 177, laws of 1907. Section 1564 is very specific in its prohibitions and the authority to enforce observance of this law is vested in the state board of health, (see *Miles City v. Board of Health*, 102 Pac. 696.)

Yours very truly,

ALBERT J. GALEN,

Attorney General