

Health, Local and County Board, Power of. State Board of Health, Effect of Order of. Smallpox, Quarantine for. Quarantine, for Smallpox by Local Boards.

Resolutions by state board of health on July 9 and December 18, 1909, do not prohibit local and county boards from maintaining quarantine and isolation hospitals in smallpox cases.

Helena, Montana, December 22, 1909.

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

Dear Sir:—

I am in receipt of your letter of the 20th instant, submitting for the consideration of this office the question:

“Has a local or county board of health, under the law, authority to establish quarantine for smallpox in the face of the stand the state board of health has taken relative to abolition of quarantine for smallpox?”

The state board of health at its meeting on July 9, 1909, adopted a resolution to the effect that there shall no longer be any quarantine for smallpox in the state of Montana, and at the meeting held by said state board on December 18, 1909, this resolution was modified by adding a proviso thereto; and said resolution, with said proviso, as now in force is as follows:

“Resolved by the state board of health of Montana that on and after January 1, 1910, there shall be no quarantine for smallpox in the state of Montana, but premises in which cases of smallpox are confined shall be placarded with a sign bearing the words ‘smallpox here,’ provided that persons who are found afflicted with smallpox in a hotel or lodging house may be, upon complaint of the proprietor of said hotel or lodging house, removed by the county or city health officer to some convenient and proper place, depending upon the fact of whether or not the patient is indigent.”

The statute, sections 1474, et seq., revised codes, creating the state

board of health, local (city) boards of health and county boards of health confers upon the state board of health general supervisory control over matters affecting the public health within the state, but it also confers upon the local and county boards of health certain exclusive powers and authority to be exercised and enforced within the jurisdiction of these respective boards. Section 1500, revised codes, defines the term "communicable disease," and includes smallpox in such definition, and section 1501 revised codes, makes it the duty of the persons to report to the city or county health officer any case of communicable disease within his household, while section 1489, in speaking of the city or county boards of health, provides, in part,

"They shall also have authority to establish and maintain, at the expense of their respective city, town, or county, isolation hospitals, where patients suffering from smallpox or other very dangerous, contagious or infectious disease may be properly quarantined and cared for, when, in their judgment, they cannot be properly quarantined and cared for elsewhere."

And by further provisions of this section it is made the duty of local and county boards of health to maintain such isolation hospitals when directed so to do by the state board of health. That part of the section quoted, however, in express terms, confers authority upon local and county boards of health to maintain isolation hospitals and the quarantine necessary to such maintenance, and the action taken by the state board of health, as above quoted, does not abbreviate this authority so conferred upon the local and county boards of health, but is, in effect, a determination by the state board of health that it will not require local and county boards of health to establish quarantine or maintain isolation hospitals in smallpox cases within their respective jurisdictions.

You are therefore advised that local and county boards of health still have the authority to establish quarantine and maintain isolation hospitals in smallpox cases when, in the judgment of such local and county boards, such course is necessary to the protection of the public health.

Yours very truly,

ALBERT J. GALEN,

Attorney General.