

Sewage District. Board of Health, Power to Order Improvement District. Health Officer, Authority to Compel Creation of Improvement District. Sewage, Discharge Of in Rivers.

A health officer has no authority to order the creation of an improvement district for the construction of a sewer. A num-

ber of cases relating to discharge of sewage in running streams cited.

Helena, Mont., July 7th, 1911.

Hon. T. D. Tuttle,
Sec'y State Board of Health,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of July 5th, submitting the question:

"As to whether or not a health officer has authority to order improvement district for the construction of a sewer?"

I know of no law which confers this authority upon a health officer. Improvement districts are organized under provisions of Sec. 3373 Revised Codes, and require a petition of one-third of the property owners.

In the letter which you transmit from health officer O'Leary of Big Timber, a further question is presented, which, however, you do not refer for answer to this office:

"As to whether sewage may be discharged in the Yellowstone river, the nearest town below there being Columbus, some 41 miles away?"

Sec. 1564, Revised Codes, as amended by Chapter 66, Session Laws of 1911, deals with this question. The general power of the state to enact statutes of this character is discussed by the supreme court of Montana, in Miles City vs. State Board of Health, 39 Mont. 405. An exhaustive case on this subject may also be found in City of Durham, vs. Eno Cotton Mills, 141 N. C. 615; 54 S. E. 453; 7 L. R. A. n. s. 321; these cases are merely mentioned as a matter of reference.

Yours very truly,

ALBERT J. GALEN,
Attorney General.