

State Board of Health, Inspection of Food By. Pure Food Law, Inspection Under. Inspection, of Articles of Food. Inspectors, Additional by County. Authority of County, to Appoint Inspectors.

The board of county commissioners have no authority to appoint additional health officers under name of inspectors, as inspection of articles of food under the pure food law is the duty of the state board of health, and the county and local health officers. The county board cannot create additional offices.

January 23, 1912.

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

I am in receipt of your letter of the 12th inst., submitting a ques-

tion received by you from Honorable J. B. Sullivan, Secretary of the County Board of Health of Silver Bow county, Montana, as to authority of the board of county commissioners to appoint additional inspectors to take care of the additional inspections that are required under the rules of the state board of health.

Under the provisions of Section 1492 of the Revised Codes, the county board of health is created and the county commissioners of each county are authorized to make selections of some physician who shall be the county health officer, and under the provisions of the law relating to state and county health officers, Sec. 1474, et seq., Revised Codes, it is the duty of the county board of health and particularly of the county health officer, to assist the state board of health in carrying into execution the rules and regulations prescribed by the state board of health in the preservation of the public health. Sec. 11, Chap. 130, Laws of 1911, make it the duty of the county and local health officers to assist the state board of health in the execution of the rules and regulations prescribed by the state board of health relating to the enforcement of the provisions of said Chapter 130, known as the Pure Food and Drug Law, but nowhere in either law is there any authority conferred upon the county commissioners to appoint additional county health officers. The county health officer is a public official, and a public office can only be created by an act of the legislature, hence there is no authority vested in the county commissioners to appoint additional county health officers.

It has been heretofore held by this office that the county health officer cannot appoint an assistant, for, by so doing, he would be creating a separate office.

Opinions Attorney General, 1906-08, 102.

However, it has also been held by this office that a county health officer has the authority to incur reasonable, necessary and legitimate expenses for the suppression or prevention of contagious or infectious diseases.

Opinions of Attorney General, 1905-06, 282.

I am not informed as to the nature of the inspections required to be made by the rules of the state board of health under the pure food and drug law, and it may be that such inspections, or some of them, may be a legitimate expense which may be legally incurred by the county health officer, even to the extent of engaging employees, but the county commissioners cannot legally appoint additional county health officers, nor is there any provision made for the payment of any county health officer except the one whom the commissioners are authorized to appoint.

Very truly yours,

ALBERT J. GALEN,

Attorney General.