

State Board of Entomology, Rules and Regulations of. State Board of Health, Approval of Rules and Regulations by. State Live Stock Sanitary Board, Establishment of Quarantine by as Agent. Quarantine, Establishment of by Agent.

When the state board of entomology, by virtue of its powers, decides upon the necessity of quarantine, it is immaterial whether such quarantine is established directly by it or through the instrumentality of another board acting as its agent.

Acquiescence in, or non-action by the state board of health in the matter of the rules and regulations prescribed by the state board of entomology is equivalent to approval.

June 19th, 1913.

Dr. W. F. Cogswell,
Executive Officer, Department Public Health,
Helena, Montana.

Dear Sir:

Upon the 17th instant you addressed this office as follows:

"Sec. 6 of the act creating the board of entomology gives this board the right to quarantine animals. At a regular meeting of the board of entomology a resolution was passed to the effect that when any such quarantine was necessary that it should be done through the livestock sanitary board. I would like your opinion as to whether a quarantine so established would be a legal quarantine.

"Sec. 7 states that all rules and regulations of the state board of entomology shall be subject to the approval of the state board of health. The next regular meeting of the state board of health will not be held until October. If I, as secretary of the state board of health, approve the rules and regulations of the board of entomology, are such rules and regulations legal?"

With reference to the first proposition contained in your letter, I am of the opinion that a quarantine established as indicated would in all respects be a legal quarantine, for in such case, the livestock sanitary board, being a board clothed with general powers respecting the quarantine of livestock, would be acting not upon its own initiative, but as the agent and under the direction and authority of the board of entomology, which, under the provisions of Chap. 120 of the Session Laws of the Thirteenth Legislative Assembly, is clothed with power and authority to make and prescribe rules and regulations, including the right of quarantine over animals and persons under certain prescribed conditions, and I am thoroughly convinced that when the board of entomology, by virtue of its general powers, decides upon the necessity of a quarantine, that it becomes wholly immaterial whether such quarantine be established directly by the board or through the instrumentality of another board acting as its agent, for there is not in such a case an unwarranted delegation of

power or authority, such as to bring into serious question the legality of your actions.

With reference to the second proposition contained in your letter, Sec. 7 of Chapter 120 of the Session Laws of the Thirteenth Legislative Assembly deserves quoting:

"All rules and regulations of the state board of entomology shall be subject to approval by the state board of health."

The phrase "subject to approval" was defined by the Supreme Court of Massachusetts in *Doty v. Lyman*, 44 N. E. 337; 166 Mass. 318; 7 Words and Phrases, 6713, and it was there held that the words when used in connection with the powers of the board of aldermen of a municipality over street improvements that the board, "subject to the approval of the mayor," had exclusive authority over such improvements, did not mean subject absolutely to his approval in such sense that no act of the board in reference to such work could take effect unless approved by the mayor. The board of entomology when exercising jurisdiction over the matter, is clothed with discretionary power and upon it devolves the duty of ascertaining certain facts and deciding upon appropriate action, and it is inevitable that rules and regulations become necessary to guide its conduct, and when by deliberate action this board promulgates such rules and regulations for the purpose of formally enabling it to deal with matters within its jurisdiction, it seems to me that if they should be a nullity unless and until the board of health, acting independently, should approve their course, the legislature would have so declared in unmistakable terms.

It is my opinion, therefore, that acquiescence in or non-action by the board of health in relation to this matter of rules is equivalent to approval, being a tacit admission that they are not objectionable.

Yours very truly,

D. M. KELLY,
Attorney General.