

**County Health Officer, Authority of. City or Town, Under  
County Health Officer.**

A city or town which has placed itself under a county board of health is not in position to dictate, but is subordinate to that body, and the county health officer has the same authority within the city as he has in the county. The county board, however, should, as far as it can, recognize existing regulations within the city.

October 1st, 1913.

Hon. W. F. Cogswell,  
Secretary State Board of Health,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 29th ultimo, submitting the proposition:

"Has an incorporated city or town which places itself under the care of the county board of health, authority to prescribe the duties of the county health officer, or the manner in which such duties shall be performed within such city or town?"

By provision of Sec. 1484, Revised Codes, authority is given to any incorporated town of less than five thousand inhabitants to place itself under the care of the county board of health, and it is further provided in said section:

"In such cases the county health officer \* \* \* shall have the same authority within the incorporated limits of such towns as he had in the county outside of the corporate limits."

It will be noticed by the provisions of this section that the city or town in such cases places itself under the county board of health; that is, the city in providing for a local board of health may subordinate itself to the county board. Being under the county board of health, it is in no position to dictate to that body, but it is subordinate to it, and the county health officer has the same authority within

the city as he has in the county outside of the city. Hence, the ultimate authority in such cases is vested in the county board of health, and the city can only act in an advisory capacity, but has no jurisdiction to control the action of the county board.

The object to be attained by both the local and county boards of health is to conserve the public health, and it is very probable that in centers of population as in cities and towns, different rules and regulations or different methods of procedure than that employed in sparsely settled districts may be necessary and where it is practical the county board of health will undoubtedly follow the wishes of the city as expressed in its ordinances, especially in view of the fact that the city is responsible for the expense incurred. For instance, it may not be thought advisable to establish a quarantine in country districts on account of the prevalence of smallpox, but the county board of health may, either of its own motion, or yielding to the express will of the municipality, establish such quarantine in cities and towns which have placed themselves under the care of the county board. It would be a contradiction of terms to say that a city placing itself under the care of the county board may then dictate to that board or to its health officer. In such cases the authority of the county board is extended over the city or town to be exercised practically in the same manner as though such city or town was not incorporated. But so far as it can be done, the county board should recognize existing regulations within the city, and for the sake of harmony and unity of action, when advisable give effect to the properly expressed wishes of such municipality.

Yours very truly,

D. M. KELLY,  
Attorney General.