

County Health Officer, Duties of. Duties of County Health Officers. Sheriffs, Duties of in Regard to Contagious Diseases. County Officers, Terms of. Terms of County Officers.

Under the provisions of Section 1490, R. C. of Montana, 1907, it is not the duty of the sheriff to make investigations as to the presence or absence of contagious diseases, this being the duty of the county health officer.

The question of the terms of county officers was covered in an opinion found at page 469, Vol. 4, Reports and Official Opinions of the Attorney General, except as to clerks of district courts, which subject is touched upon by this opinion.

February 19th, 1914.

Hon. B. E. Berg,
County Attorney,
Columbus, Montana.

Dear Sir:

I am in receipt of your communication under date of the 2nd instant, submitting for my opinion the two following questions:

"1. Where there is a suspicion that there is sickness in a household, may the county health officer call upon the sheriff's office to investigate the matter and report to him whether such sickness exists and whether there is reason to believe it is contagious?"

"2. Under Sec. 4 of Chap. 112 of the Session Laws of the Twelfth Legislative Assembly, do officers elected in Stillwater County for four and six year terms hold over for the full length of their term, or will it be necessary to elect such officers at the coming election, i. e., 1914?"

Your first question arises upon an interpretation of Sec. 1490, Revised Codes of Montana 1907, providing as follows:

"Any local, county or state health officer may call upon all sheriffs, constables, or other public officers to assist them in the discharge of their duties, and if any such officer, so called upon, shall neglect or refuse to render such service, he shall be guilty of a misdemeanor and subject to removal from office."

I note that you have held that this was not contemplated by this

section—that the sheriff should make investigations as to the presence or absence of contagious diseases, and I am of the opinion that your conclusion is correct. The law places upon the health officer the duty of making these investigations and of determining the necessity for action. Such matters necessitate the exercise of training and skill, which would not be had by a sheriff or constable. To compel the sheriff or constable to make such investigations would, in effect, be a delegation of the duty and power of the county health officer, which would be contrary to the provisions of our laws. The purpose of Sec. 1490 was, I think, to place in the hands of the county health officer a means of making investigations where resistance was offered or of compelling an observance of his orders and regulations. I am, therefore, of the opinion that the said section does not authorize the county health officers to call upon the sheriff or constable to make an investigation as to the presence or absence of diseases needing the attention of the county health officer.

Your second question has received consideration by this office and our views expressed in an opinion to the Havre Plaindealer, under date of June 5th, 1912, found in Vol. 4 of the official Opinions of the Attorney General, page 469, to which opinion you are respectfully referred. It is to be noted, however, that that opinion did not touch upon the subject of the tenure of office of clerks of district courts, elected under the provisions of Chap. 112, Session Laws of the Twelfth Legislative Assembly. In regard to this office, provision for which is made in Art. VIII, Sec. 18, Constitution, I will say that I think that the tenure is governed by the constitutional provision, and that a clerk of the court elected under the provisions of the new counties act would hold until the next general election at which a judge would be elected under the terms of the constitution.

Yours very truly,

D. M. KELLY,
Attorney General.