

**State Board of Health, Powers of. Dairies, Licensing of.
State Dairy Commissioner, Powers and Duties of.**

Under existing laws it is competent for the State Board of Health to co-operate with the State Dairy Commissioner in carrying out the provisions of existing laws relating to both.

It is unlawful to carry on a dairy business in this state without a license from the State Board of Health.

March 23, 1915.

Hon. W. F. Cogswell,
Department of Public Health,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 13th instant, wherein you set forth:

"Section 10, Chapter 130, of the Session Laws, 1911, makes it unlawful for any person to conduct a dairy without having a license issued by the State board of Health. Section 11 provides for the inspection of dairies by the local, county and health officers and gives the State Board of Health authority

to make rules and regulations relative to the sanitary conditions of dairies.

I should like to know in what respect the law of 1913, creating the office of Dairy Commissioner, affects the powers and duties of the State Board of Health, relative to the issuing of licenses to dairies and the inspection of dairies.

During the past two years by an arrangement with the Dairy Commissioner, the State Board of Health, through its local and county health officers, continued the inspection of dairies retailing milk. Our authority on several occasions has been questioned by the dairymen.

I should like to know whether it is lawful to conduct a dairy without a license from the State Board of Health, and also whether Chapter 130, Session Laws 1911, is still operative in respect to dairy inspection by local and county health officers."

Chapter 130, Session Laws of the Twelfth Legislative Assembly, confers certain powers upon, and defines the duties of the State Board of Health with relation to foods and drugs, the inspection thereof, to ascertain their purity, and with reference to dairy products, to direct the manner in which they shall be handled, so as to insure their purity and sanitary condition, and to this end confers power upon the Board of Health to license the same and to make it unlawful to engage in the dairy business without a license from the State Board of Health. It directs the Board to make rules and regulations for the thorough and uniform enforcement of the provisions of the Act, which shall conform to the rules and regulations of the National Food and Drug Commission, made under the provisions of the National Food and Drug Act of June 30, 1906, so as to enable the Board to analyze and determine the purity of dairy products, and to insure the sanitary management of dairies.

Chapter 77 of the Laws of the Thirteenth Legislative Assembly is an Act creating the office of State Dairy Commissioner, and defines his powers and duties, among which are to advise and instruct dairymen; to condemn unclean and unwholesome milk, cream, etc.; to compile statistics, and give information and advice on the dairy industry with a view of securing settlers from the east, to encourage the investment of capital in the dairy industry; to co-operate with the Agricultural College at Bozeman, with a view of holding farmers' institutes for the instruction of persons engaged in the dairy industry; to inspect dairy products, with a view of ascertaining whether the same be adulterated, and to see that milk, cream and other dairy products are kept in such places as to insure their sanitary condition when delivered to the consumer.

It is my opinion that this latter act is not inconsistent, or in conflict with the Act of 1911, which does not undertake to repeal it; nor can it be said that any of its provisions are so inconsistent with the act of 1911 so as to warrant the conclusion that there is a repeal by implication. Both Acts are in my judgment in full force and effect. This being true, it is competent for the State Board of Health to co-

operate with the Dairy Commissioner in carrying out the provisions of both Acts.

It is of course unlawful for any person to conduct a dairy without a license from the State Board of Health.

Yours very truly,

D. M. KELLY,

Attorney General.