

## Opinion No. 165.

## State Board of Health—Rules and Regulations—Locker Plants.

Held: The State Board of Health has no jurisdiction to make and enforce the rules and regulations as to the operation of locker plants, unless certain standards of operation in such plants are necessary to prevent disease.

January 17, 1944.

Dr. W. F. Cogswell  
Executive Officer  
State Board of Health  
Helena, Montana

Dear Dr. Cogswell:

You have requested an opinion of this office asking whether it is within the jurisdiction of the State Board of Health to pass regulations controlling locker plants, and if so, whether the State Board of Health may enforce such regulations for the benefit of the general public.

Section 2448, Revised Codes of Montana, 1935, relating the powers and duties of the State Board of Health, provides in part as follows:

"The state board of health shall have general supervision of the interests and health and life of the citizens of the state . . . (states certain investigation duties); they shall have general oversight and direction of the enforcement of the statutes respecting the preservation of the health and the prevention of the spread of communicable diseases; they shall have general supervision of the work of local and county boards of health, hereinafter defined, and they shall, at each session of the legislature, submit through the governor a full report of their investigations, and such suggestions and recommendations as they may deem proper."

Section 2450, Revised Codes of Montana, 1935, pertaining to the power of the board to make and enforce rules and regulations provides in part as follows:

"The state board of health shall have power to promulgate and enforce such rules and regulations for the better preservation of the public

health in contagious and epidemic diseases as it shall deem necessary, and also regarding the causes and prevention of diseases, and their development and spread . . ."

The business referred to in your inquiry is not involved in selling any product, but only in providing a place where products may be kept, and there is no direct statutory law giving the board authority to regulate such industries. Any authority that the board might have over such a business would have to come from its implied powers to make rules and regulations. Therefore, I believe that it would have to be found that the manner of conducting such a business was the direct cause of contagious and epidemic diseases or diseases generally. See in this respect, Section 2450, Revised Codes of Montana, 1935, and 29 Corpus Juris at page 248. The latter citation states:

"Boards of health or other sanitary authorities have no inherent legislative power. They have only such powers as are conferred on them, either expressly or by necessary implication. While they are frequently given authority over things which are not injurious to the public health, but merely offensive to the senses, or injurious to property, yet in the absence of such statutory extension of their powers they cannot take cognizance of matters not affecting the public health."

The business proprietor in this instance does not sell the products in his place of business, but the products are owned by individuals renting the lockers and the products are used for such individuals' private use. Any damage to the products by virtue of negligence on the part of the proprietor would be an injury to property. If the products are damaged the owner could have his redress against the proprietor, either for the loss or damage to the product or for damages due to ill effects caused by eating the damaged products. Damage to such products would not become a matter within the jurisdiction of the State Board of Health unless such damage to the products caused, or should have caused, a disease.

The only instance where the statutes of this state seem to control the use of food by the individual is when the food does or might cause the spread

of contagious diseases. See in this respect Section 11540, Revised Codes of Montana, 1935, which provides in part as follows:

“Every person who owns or has the custody of any cattle . . . infected with a contagious disease . . . or sells, gives away or uses the meat or milk . . . or any part of such animal, is punishable by a fine. . .”

This interpretation is fortified and is worthy of note in answering your question, that the matter of the State Board of Health regulating locker plants was before the last legislative assembly of this state, and that body did not see fit to enact legislation on the matter.

It is my opinion that the State Board of Health has no jurisdiction to pass regulations controlling locker plants and therefore could not enforce any regulations regarding the same, unless, however, it should be determined such business had to be operated in accordance with certain standards; otherwise the operation would contribute to or cause disease. In the latter event regulations necessary to prevent disease might be made and rules relating thereto might be enforced under the general authority given the board under Section 2450, Revised Codes of Montana, 1935.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General