

Opinion No. 95
Public Health —
Communicable Diseases —
Duties of Police Officers

HELD: 1. Persons afflicted with communicable diseases and resisting

treatment may be quarantined or isolated in the county hospital and detained until cured.

2. Tuberculars who resist treatment should be taken care of in the district where effective control may be maintained.

3. Law enforcement agencies must assist and cooperate with the local health boards so that the desired results may be achieved.

November 29, 1956

Mr. John C. Harrison
County Attorney
Lewis & Clark County
Helena, Montana
Dear Mr. Harrison:

You have requested my opinion on the following questions:

If the local board of health discovers cases of communicable diseases dangerous to the public health, venereal diseases, or tuberculosis, who refuse treatment.

1. What steps are taken to insure treatment?

2. May the county hospital be used for isolation?

3. May tuberculars be required to go to Galen?

4. Must the sheriff cooperate with the local board of health?

Tuberculosis is, specifically, by statute, Section 69-120, R.C.M., 1947, included within the definition of "communicable diseases" as used in the parent act of Chapter 110, Laws of 1907. That same act, which creates the State Board of Health, also created the local boards of health and enumerated their powers which extend to "control of all persons and things in their respective districts." (Section 69-606) in matters affecting the public health.

It is obvious that the local boards of health have jurisdiction over those afflicted with communicable diseases, but that jurisdiction extends only to the geographical limits of their "respective districts". Under

the circumstances, a tubercular who resists treatment could not be sent out of that district and to Galen and effective exercise of control and jurisdiction continued.

It has been held that the quarantine provisions of our public health acts are a valid exercise of the state's police power. In re. Caselli, 62 Mont. 201, 204 Pac. 364. That case held that the defendant could be arrested under warrant of and held under order of the local public health officer. The provisions of Section 69-606, are no less enforceable than those of the Venereal Disease Control Act. The power to control implies the power to examine, to detain, to quarantine, to treat and to isolate. The provisions of Section 69-123, 69-605, 69-609, 69-1116 and 94-3575, R.C.M., 1947, are broad enough in scope and application to subject those who resist to criminal process.

Those granted powers carry with them expressly the power to provide isolation hospitals, and I find no prohibition nor see any reason why the county may not use its own hospitals for isolation if the facilities are there available. Implicit is the duty to use whatever facilities are best available in the furtherance of the granted powers, whether it be the most modern isolation hospitals or a portion of the county or city jail.

Necessity and common sense dictates that the local health boards be assisted by those who are specifically enjoined to enforce the laws. Legislative thought finds expression in Section 69-608, R.C.M., 1947:

"Police Officer Must Assist Health Officer When Requested. 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."

It is therefore my opinion that those afflicted with communicable diseases and resisting treatment may

be quarantined or isolated in the county hospital and detained until cured.

It is also my opinion that tuberculars who resist treatment should be taken care of in the district where effective control may be maintained.

It is also my opinion that law enforcement agencies must assist and cooperate with the local health boards so that the desired results may be achieved.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.