

VOLUME NO. 37

OPINION NO. 177

BOARDS OF HEALTH - Power of district boards of health to adopt licensing regulations for sewage disposal contractors; LICENSES - Validity of license regulations adopted by district boards of health; REVISED CODES OF MONTANA, 1947 - Section 69-4509.

HELD: District boards of health have the statutory power to license contractors who perform work on sewage disposal systems which are not connected to municipal sewage systems.

20 December 1978

Timothy J. O'Hare, Esq.
Deputy County Attorney
Fergus County Courthouse
Lewistown, Montana 59457

Dear Mr. O'Hare:

You have requested my opinion on a question which I will state as follows:

Is a district board of health created pursuant to Title 69, chapter 45, R.C.M. 1947, empowered to promulgate a regulatory license requirement for sewage disposal contractors?

Your letter and accompanying documents inform me that six central Montana counties have formed the Central Montana Health District, to be served by a district board of health. The board has promulgated a regulation requiring contractors who construct or alter a sewage disposal system "other than a public or community system" to first obtain a license by paying a fee and meeting certain enumerated criteria. Your request deals with the validity of this regulation.

The regulation in question is a result of an attempt by the district board to exercise a police power for the protection of public health. As such, its validity depends on the two-fold finding that the district board possessed the statutory power to enact the regulation, and that the regulation is reasonably tailored to the problem it was intended to solve, is not arbitrary or capricious, and therefore does not violate constitutional requirements of due process. See City of Missoula v. Swanberg, 116 Mont. 232, 234, 149 P.2d 248 (1944). Evaluation of the factual questions which must be answered nor a decision on the constitutionality of the regulation are within the proper scope of this opinion. However, the question of statutory authority is one I feel free to consider.

District boards of health are delegates of the state for the purpose of exercising a portion of the state's police power for the protection of public health. As such, the board possesses those powers granted by statute as well as those which must necessarily be implied if the board is to fully achieve its purpose. See Guillot v. State Highway Commission, 102 Mont. 149, 153-54, 56 P.2d 1072 (1936). Section 69-4509(2)(j) empowers the board to promulgate "necessary regulations ... for the control and disposal of sewage from ... buildings not currently connected to any municipal system." The regulation in question reaches contractors only when they work on systems within the regulatory power of the board, that is, on those systems not connected to a public sewage disposal system. Further, it could not be questioned that the power to regulate sewage disposal necessarily includes the power to ensure the creation and operation of safe and sanitary sewage disposal systems. The board has broad discretion to meet this regulatory goal by the means which it finds best suited. See Guillot, 102 Mont. at 158. In my opinion, a requirement that sewage contractors meet certain minimum competency requirements is a proper exercise of that discretion.

THEREFORE, IT IS MY OPINION:

District boards of health have the statutory power to license contractors who perform work on sewage disposal systems which are not connected to municipal sewage systems.

Very truly yours,

MIKE GREELY
Attorney General