

COUNTIES - Authority to form district boards of health;
 COUNTY ATTORNEYS - Legal representation of district boards of health;
 COUNTY COMMISSIONERS - Authority to contract to provide legal representation for district boards of health;
 COUNTY COMMISSIONERS - Formation of district boards of health;
 HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF - District boards of health;
 HEALTH BOARDS AND DISTRICTS - Formation of and provision of insurance and legal representation for district boards of health;
 INSURANCE - Responsibility to provide insurance for district boards of health;
 LEGISLATURE - Presumption as to validity of its acts;
 LOCAL GOVERNMENT - Formation of health districts;
 MONTANA CODE ANNOTATED - Sections 2-9-101, 2-9-101(3), 2-9-101(5), 2-9-211, 2-9-212, 7-4-2711, 7-4-2717, 50-2-101(3), 50-2-104, 50-2-107, 50-2-116 to 50-2-118;
 OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 27 (1983);
 REVISED CODES OF MONTANA, 1947 - Sections 82-4301 to 82-4335.

- HELD: 1. A district board of health formed pursuant to section 50-2-107, MCA, stands in place of the county boards of health of those counties that formed the district.
2. A district board of health has the responsibility of providing its own legal advisor.
3. The counties forming a district board of health are responsible for providing the insurance for the district board of health.

6 August 1985

Gerry M. Higgins
 Golden Valley County Attorney
 Golden Valley County Courthouse
 Ryegate MT 59074

Dear Mr. Higgins:

You recently requested my opinion concerning the following questions:

1. Is a district board of health created in addition to, or in place of, county boards of health?
2. Who is the legal advisor for a district board of health?
3. Who is responsible for obtaining insurance for a district board of health?

Section 50-2-104, MCA, states in pertinent part:

County boards of health. (1) There is a county board of health in each county

Section 50-2-107, MCA, authorizes two or more adjacent counties to form a district board of health by mutual agreement. Section 50-2-107, MCA, states in pertinent part:

(1) By mutual agreement, two or more adjacent counties may unite to create a district board of health. ... [Emphasis added.]

A district board of health is a local board of health. § 50-2-101(3), MCA. As a local board of health the district board of health must comply with section 50-2-116, MCA, prescribing the powers and duties of local boards of health. The health officer of the district board of health, appointed pursuant to section 50-2-117, MCA, must comply with section 50-2-118, MCA, which sets out the powers and duties of local health officers.

County boards of health are also local boards of health. § 50-2-101(3), MCA. Both a county board of health and a local health officer must comply with the powers and duties of local boards of health and the powers and duties of local health officers prescribed by section 50-2-116, MCA, and section 50-2-118, MCA, respectively.

Section 50-2-104, MCA, appears to mandate the creation of a county board of health in each county. In contrast, section 50-2-107, MCA, grants the discretionary power to adjacent counties to unite to

form district boards of health. If read literally sections 50-2-104 and 50-2-107, MCA, would seem to require each county to have a county board of health even if the county is also a member of a district board of health. Such an interpretation is, however, unreasonable because all local boards of health have the same powers and duties pursuant to section 50-2-116, MCA. If all counties were required to have a county board of health in addition to a district board of health, there would be a duplication of services in those counties belonging to district boards of health. Such a result would render the creation of district boards of health meaningless. The Legislature does not perform useless acts. Kish v. Montana State Prison, 161 Mont. 297, 301, 505 P.2d 891, 893 (1973).

A district board of health stands in place of the county boards of health in those counties which formed the district board of health. Once a county joins a district board of health there is no need for the county to maintain a county board of health.

With respect to your question concerning the legal advisor for district boards of health, the county attorney is the legal advisor of the board of county commissioners. § 7-4-2711, MCA. Section 7-4-2711, MCA, states in pertinent part:

County attorney to be legal advisor of county and other subdivisions. (1) The county attorney is the legal advisor of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against this county.

The county attorney must also "perform such other duties as are prescribed by law." § 7-4-2717, MCA.

The Legislature has specifically enumerated the duties of the county attorney concerning other types of districts. See, e.g., § 7-4-2711, MCA. It has remained silent as to whether the county attorney is the legal advisor to a district board of health. In the absence of a specific statutory mandate, the county attorney is not the legal advisor to a district board of health. See 40 Op. Att'y Gen. No. 27 (1983).

The Legislature has provided the district board of health the power to employ necessary qualified staff. § 50-2-116(1)(c), MCA. A legal advisor is doubtless a necessary member of the staff of a district board of health. The district board of health has the responsibility of providing its own legal advisor.

Your third question concerns the responsibility for obtaining insurance for district boards of health. The legislative intent of the Tort Claims Act, §§ 82-4301 to 4305, R.C.M. 1947, now entitled the Liability Exposure and Insurance Coverage Act, §§ 2-9-101 to 805, MCA, was to make cities and other political subdivisions, rather than the State, responsible for the negligence of their employees. State v. District Court of the Thirteenth Judicial District, 170 Mont. 15, 20, 550 P.2d 382, 384 (1976). Section 2-9-102, MCA, provides in pertinent part:

Governmental entities liable for torts except as specifically provided by legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment

A governmental entity includes political subdivisions which, in turn, include counties. § 2-9-101(3) and (5), MCA. If a political subdivision desires to procure insurance, it may do so pursuant to the provisions set out in sections 2-9-211 and 2-9-212, MCA.

As a political subdivision, a county is the provider of insurance of its employees and agents, under the above statutes. Since a district board of health is created by its member counties, those counties are responsible for providing insurance for their district board of health.

THEREFORE, IT IS MY OPINION:

1. A district board of health formed pursuant to section 50-2-107, MCA, stands in place of the county boards of health of those counties that formed the district.

2. A district board of health has the responsibility of providing its own legal advisor.
3. The counties forming a district board of health are responsible for providing the insurance for the district board of health.

Very truly yours,

MIKE GREELY
Attorney General