

Opinion No. 61-79

September 1, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne Assistant Attorney General

TO: Stanley J. Leland, M.D. Director Department of Public Health Santa Fe, New Mexico

QUESTION

QUESTIONS

1. What is a municipal health department as provided for in Section 12-2-10., N.M.S.A., 1953 Compilation (P.S.)?
2. Is the State Board of Public Health empowered to define a municipal health department?
3. What is the jurisdictional sphere of district health officers and directors of municipal health departments?
4. May the district health officer provide services in a municipality when the municipal health department does not provide such services and when, in the opinion of the district health officer or State Department of Public Health, such services are necessary for protection of the public?
5. Are the terms city health officer and director of a municipal health department synonymous?
6. May the State Board of Public Health set the qualifications for the position of municipal health department director?
7. Does the director of a municipal health department bear the same relationship to the State Department of Public Health and the State Board of Public Health as does the district health officer?
8. May the State Board of Public Health suspend or dismiss a municipal health director for cause?
9. Is there a conflict in the provisions setting forth the jurisdiction of municipal health directors and district health officers?
10. What is the procedure for publishing the rules, regulations and orders of a director of a municipal health department?

CONCLUSIONS

1. See analysis.
2. No.
3. See analysis.
4. Yes.
5. See analysis.
6. No.
7. Yes.
8. Yes.
9. No.
10. See analysis.

OPINION

ANALYSIS

While the definition of a municipal health department is probably not a legal question as such, we would say that in the context in which the phrase is used in Section 12-2-10, N.M.S.A., 1953 Compilation (P.S.), it is the division or branch of municipal governmental administration that is charged with carrying out the health programs and activities adopted by municipal ordinance, as well as with preserving the public health and enforcing the health laws within the limits of the municipality.

Your next question is whether the State Board of Public Health has the prerogative of defining a municipal health department. We do not believe that Section 12-2-10, N.M.S.A., 1953 Compilation (P.S.), so contemplates.

This Section, as amended in 1961, provides that incorporated municipalities may create health departments and may, by ordinance, adopt certain health activities and programs. In addition, subject to certain express limitations, the governing body of the municipality may promulgate regulations setting forth the qualifications of a municipal health department director. While the activities and programs of municipal health departments are subject to approval of the State Board of Public Health, we believe that the municipal governing body is the proper authority in the first instance, to create a municipal health department, and, if necessary, define what it is.

Your next question appears to involve the issue of sub-ordination of the municipal health director to the district health officer. Section 12-2-10, supra, provides that the powers and jurisdiction of the district health officer extend to all areas within his district, whether incorporated or unincorporated. It further provides that municipal public health personnel shall work under the direct supervision and control of the district health officer. The one exception to this over-all supervisory authority is that it shall not extend to the activities and programs enacted by ordinance in incorporated municipalities which have created health departments. If such activities and programs have been approved by the State Department of Public Health, it is within the sphere of the director of the municipal health department to see that such programs are carried out. In this regard, Section 12-2-10, supra, provides that the municipal health director shall at all times perform such duties and execute such policies and programs as his municipality by ordinance has or may enact. In this limited area, the municipal director is not directly accountable to the district health officer but rather to the Department of Public Health and the State Board of Public Health. The line of demarcation here may sometimes be difficult of ascertainment, but the legislative intent is clearly set out. It appears that what is contemplated is a cooperative effort with final authority vested in the State Board of Public Health.

You next ask whether the district health officer may provide services in the municipality when the municipality does not provide such services and when, in the opinion of the district health officer or the State Department of Public Health such services are necessary for protection of the public health. Our answer is yes.

Since the State Department of Public Health is charged with the responsibility of supervising the health of the people of the state, it may, by way of the district health officer, do whatever is reasonably necessary to safeguard and protect the health of the people within the district. Section 12-1-4, N.M.S.A., 1953 Compilation.

You ask whether the "city health officer" referred to in Section 12-2-9, N.M.S.A., 1953 Compilation, is synonymous with "director of a municipal health department" referred to in Section 12-2-10, supra. While this is probably the case, it must be remembered that the portion of Section 12-2-9, supra, relative to city health officers was enacted in 1947, while the portion of Section 12-2-10, supra, providing for municipal health departments was enacted by the 1961 Legislature. It is our opinion that the provision in Section 12-2-9, supra, providing for city health officers has actually been superseded by Section 12-2-10, supra, providing for the establishment of municipal health departments.

This brings us to your question as to whether the State Board of Public Health may set the qualifications for a director of a municipal health department since it was empowered to do so in the case of a city health officer. Our conclusion is in the negative.

Section 12-2-10, as amended in 1961, is the latest pronouncement of our Legislature concerning the qualifications of the director of a municipal health department, and in the amendment, the Legislature itself chose to exercise its prerogative of establishing the

minimum qualifications for a municipal director rather than delegating this function to the State Board of Public Health. This Section provides that the director's qualifications are to be established by the governing body of the municipality except that such person must hold not less than a Master of Public Health degree or an equivalent degree in public health from an institution of higher learning accredited by the American Public Health Association.

You inquire whether under Section 12-2-10, as amended in 1961, the director of a municipal health department and his department bear the same relationship to the State Department of Public Health as does the district health officer and his department. Our conclusion is yes.

The 1961 amendment of Section 12-2-10, *supra*, provides that the health activities and programs adopted by a municipality to be carried out by the municipal director are "subject to approval of the State Board of Public Health". It further provides that the powers to be exercised by the municipal director shall be "in subordination to and subject to the approval of the State Department of Public Health." In addition, the Section provides that "The director shall enforce all rules and regulations promulgated by the State Board of Public Health, be under its supervision and control and make such reports to the State Department as it may direct . . .".

With such a degree of control and supervision over municipal directors vested in the State Board of Public Health, we conclude, in answer to your next question, that the Board may suspend or dismiss a municipal health director for cause, subject to a right of appeal. See Section 12-2-3, N.M.S.A., 1953 Compilation.

Your next question is whether the statutory proviso in Section 12-2-10, *supra*, that "the jurisdiction of the municipal health director shall extend to his municipal boundaries and to such areas providing goods and services affecting health within the municipality providing that such jurisdiction does not conflict with state and federal law" actually does conflict with the district health officer's authority contained in this same Section. We conclude that there is no conflict.

Section 12-2-10, *supra*, sets forth the jurisdiction and powers of both the district health officer and the municipal director. While there may appear to be some jurisdictional overlapping, it is our opinion that the district health officer's jurisdiction in municipalities extends to all facets of public health except local activities and programs enacted by ordinance. See answer to question 3.

Your final question relates to publications of rules, regulations and orders of directors of municipal health departments. Section 12-2-12, N.M.S.A., 1953 Compilation, specifically sets forth the method of publication for orders of district health officers. There is no such express statutory provision relating to orders of municipal health department directors. In view of the over-all supervisory control that the State Board of Public Health exercises over municipal directors, this is a matter which the State Board may handle by way of duly promulgated regulations.