

Opinion No. 16-1735

February 10, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Dr. W. E. Kaser, Secretary, New Mexico Board of Health, East Las Vegas, New Mexico.

State board of health and county health officers.

OPINION

{*305} I have today received your letter of the 7th instant in which you ask a series of five questions on the subject of county health officers. The legislation as to those officers is in such condition that it is difficult, with any confidence, fully to answer your questions, but I will endeavor to do so as far as I am able, first stating your question and then making some answer to it.

1. What relation does a regularly appointed health officer have to the State Board of Health?

This is made difficult in consequence of the action of the legislature in 1909 in changing the law as to the appointment of county health officers. By Section 22 of Chapter 103 of the Laws of 1903, the territorial board of health was authorized to appoint in each county one reputable physician who should be the county health officer and be subject to the orders of the board and be its chief executive officer in his county for the purpose of carrying out the provisions of the act. In 1909, by Section 4 of Chapter 99 of the laws of that year, the board of county commissioners in each county was authorized annually to contract, in writing, with some reputable physician who is to be the county health officer of the county. He was declared to be subject to the orders of the board of county commissioners and to be their chief officer for the purpose of carrying out any health regulations. This provision reappears in the codification of 1915 as Section 4627 with a change which broadens the authority of the county health officer very materially, as it is declared that he and his assistants, "for the purpose of enforcing the provisions of the four preceding articles of this chapter," shall be vested with the powers of a constable. The four preceding articles relate to "Nuisances," "Quarantine," "Vaccination" and "Dead Bodies," respectively.

In as much as the board of health has no control over the employment or discharge of the county health officer, it is difficult to {*306} see just what relation there can be between the board and such officer. The board cannot control him as he is in no way subject to its orders.

2. Is it incumbent upon the State Board of Health to recognize a county health officer appointed by board of county commissioners?

I am not sure that I exactly understand this question. The county health officer appointed by the county commissioners, is a public officer and in the discharge of his duties might officially have relation with the board of health and the board can properly recognize his official existence the same as it would of any other public officer with whom it comes in contact.

3. Does a county health officer require any specified authority expressed by State Board of Health?

I cannot see that there is anything in the law which requires any specified authority to a county health officer from the state board of health, even though the county health officer is charged with the duty of carrying out the provisions of statutes which relate almost entirely to the board of health, its powers and regulations.

4. Has not the regularly appointed county health officer authority to make rules or regulations regarding quarantine or health matters in his county without special authority or sanction of State Board of Health providing such regulations do not conflict with regulations issued by State Board?

I cannot discover that the county health officer has any authority to make rules or regulations. He is charged with the duty of carrying out the provisions of the statute relating to the state board of health, and among other statutory provisions, that board is authorized to make rules and regulations not in conflict with law, and I believe that it becomes incumbent on the county health officer to take notice of and enforce the rules and regulations prescribed by the state board.

5. What power has the county health officer in an incorporated village that has no special health ordinance of its own and no special health officer? Is the county or the incorporated village responsible for bills so incurred by the county health officer?

The jurisdiction of the state board of health appears to have authority to exercise its powers even in incorporated places, with the exception of those provisions relating to "Nuisances," and Section 4622 of the codification provides that the costs of carrying out the provisions of Articles 3, 4, 5 and 6 of Chapter 92 of the codification when incurred in any city, town or village, shall be paid by such city, town or village, and this payment is to be made apparently without regard to whether or not the incorporated place has a special health ordinance or a special health officer or not. The same section provides that all costs incurred outside of any such incorporated place shall be paid by the board of county commissioners.