

Subject

FILE

*Health Public -  
City and County Health  
Problems*

to



STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

January 11, 1974

Opinion No. 74-13

Gerald E. Jones  
Sanitarian  
Butler-Greenwood  
Bi-County Health Department  
Courthouse  
El Dorado, Kansas 67042

Dear Mr. Jones:

K.S.A. 65-159 authorizes the state board of health and local boards of health, including joint boards of health established under K.S.A. 65-205,

" . . . to examine into all nuisances, sources of filth, and causes of sickness that may, in their opinion, be injurious to the health of inhabitants within any county or municipality in the state; and whenever any such nuisance, source of filth or cause of sickness shall be found to exist on any private property or upon any watercourse in this state, the state board of health or local boards of health shall have the power and authority to order, in writing, the owner or occupant thereof, at his own expense to remove the same within twenty-four hours, or within such reasonable time thereafter as such board may order; . . . ."

You inquire whether the boards may delegate these powers to their health officers or duly appointed sanitarians.


K.S.A. 65-201 provides for the election of a physician, "who shall be an ex-officio member of the said local board and health officer of the same." K.S.A. 65-202, prescribing the various duties of the local health officer, states that "he shall perform such other duties as this act, his local board, or the state board of health may require of him." Against these legislative pronouncements, the Attorney General William Ferguson's 1961 opinion, No. 61-288, held that the authority vested in the local boards of health might be so delegated to the health officer. The opinion states,

". . . the law does not intend that the health officer stand by and do nothing while a possible source of disease, such as typhoid fever shall be allowed to strike the community. It is his duty under the law, as it should be, to search out potential nuisances to public health and order their abatement."

Given the critical importance of an immediate response to certain health menaces, a fact clearly recognized by the statutes referred to above, we agree with Attorney General Ferguson's conclusion that the power to order, in writing, abatement of such nuisances may be delegated by the local boards to their ex-officio member, the local health officer. "The powers of administrative agencies are measured and limited by the statutes or acts creating them or granting their powers, to those conferred expressly or by necessary or fair implication." LAMJur 2d 868.

We do not believe, however, that a further delegation of the board's authority to order the abatement of such nuisances may be made to the local sanitarian. K.S.A. 65-159 empowers the local board and the health officer acting for the board to order rather drastic action to be taken at the expense of the recipient of the order. In addition, the act specifies criminal penalties in the event an order is disregarded. Without a clear legislative expression of intent that such authority may be further delegated to an employee who is not a member of the local board, we believe that an order signed only by the sanitarian may be successfully challenged as an improper administrative delegation of authority.

Very truly yours,



VERN MILLER  
Attorney General

VM:pw