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ARIZONA ATTORNEY GENERAL

Opinion 63-102-L  
R-402  
October 18, 1963

REQUESTED BY: JOHN M. POSEGATE  
Merit System Director

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION: Is a local health department, i.e. county health department, city-county health department or a district health department, required to adhere to the merit system rules and regulations of the Arizona State Health Department, notwithstanding the fact that the local health department elected to rely solely on its own financing ?

ANSWER: Yes.

State and local boards and departments of health owe their existence to the Legislature which created them. They are creatures of statutes and have only those powers expressly delegated to them by the Legislature. That public health is a matter of state-wide concern is clearly set forth in City of Flagstaff v. Associated Dairy Products Co. et al., 75 Ariz. 254, 255 P.2d. 191, in which the Arizona Supreme Court quoting from Associated Dairy Products Co. v. Page, 68 Ariz. 393, 206 P.2d 1041, said:

"The question of public health is so clearly one of state-wide concern that no citation of authority should be necessary to support it."

Again, in Globe School District No. 1 of Globe, Gila Co. v. Board of Health of City of Globe, 20 Ariz. 208, 139 Pac. 55, the Arizona Supreme Court took the position: "The question of public health is clearly one of state-wide concern rather than the concern of each of the counties."

It follows then, that boards and department of health of lesser political subdivisions are bound by the mandates contained in the state's statutes designed to safeguard the public health of the citizens throughout the State of Arizona. It was not the in-

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tention of the Legislature that the prophylactic and ameliorative implications of State statutes concerned with public health should stop at the geographic boundaries of a political subdivision and that each political subdivision handle its public health problems as a problem separate and distinct from that of the State of Arizona.

A reading of Title 36 of the Arizona Revised Statutes, in toto, gives rise to the conclusion that the Legislature of this State intended the State Department of Health to be the supervisory agency of all lesser health units throughout the State, thus insuring a reasonable degree of uniformity of application of public health measures.

Article 3, Local Boards of Health, Sections 36-161 through 36-168, generally provide for the establishment of county and state boards of health.

Article 4, Section 36-181 through Section 36-191, generally provide for the establishment of local health departments.

Section 36-186 is quoted below:

"36-186. Director of local health department;  
powers and duties

The director of a local health department shall:

1. Be the executive officer of the department.
2. Perform all duties required by law of the county superintendent of health.
3. Enforce and observe the rules and regulations of the state department of health, the local board of health, county rules and regulations concerning health, and laws of the state pertaining to the preservation of public health.

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4. Appoint necessary personnel in accordance with regulations of the merit system of the state department of health.

5. Submit an annual report to the local board of health, the county board of supervisors, each city in the district, and the state commissioner of public health. The report shall set forth:

- (a) The condition of public health in the county of district.
- (b) Activities of the department during the preceding year.
- (c) The character and extent of all diseases reported.
- (d) Expenditures of the department.
- (e) Such recommendations as he deems advisable for protection of the public health." (Emphasis supplied)

It should be noted that A.R.S. §36-186 is mandatory in that the director of a local health department shall perform certain duties as enumerated in §36-186. Particular attention should be given to sub (4) "appoint necessary personnel in accordance with regulations of the merit system of the State Department of Health." Nowhere in the statutes applicable to the local health departments is there the suggestion that the application of A.R.S. §36-186 (4) is contingent upon the type or sources of financing the local health department employs. A.R.S. §36-186 (4) is a direct legislative mandate to the director of the local health department, clear and unambiguous.

It is, therefore, the conclusion of this department that there is no relationship between the necessity of complying with A.R.S. §36-186 (4) and the method or source of financing a local health department chooses.

  
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The Attorney General

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