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Opinion No. 55-188

REQUESTED BY: George W. Marx, Director and Chief Engineer,  
Bureau of Sanitation, Arizona State Department of Health, Phoenix, Arizona.

OPINION BY: ROBERT MORRISON, The Attorney General  
H. B. DANIELS, Assistant Attorney General

QUESTION 1: What does "not inconsistent with" mean in Section 68-214, ACA, 1939, as amended?

CONCLUSION: The term "not inconsistent with" means that the regulation promulgated by local boards of health cannot be repugnant to regulations of the State Board of Health.

QUESTION 2: Can local boards of health regulate some local conditions the State Board has not regulated?

CONCLUSION: Yes, if the limitations provided in Section 68-112(d) and the procedure in Section 68-214(b)(6) are observed.

QUESTION 3: Can local boards of health utilize the power to make rules and regulations given the State Board of Health in Section 68-112, as amended?

CONCLUSION: No. They have their own rule making power under Section 68-214(b)(4)(6), supra, as limited by Section 68-112(d), supra.

County and city health boards jointly and severally are agencies of political subdivisions, not of the state department. Either or both political subdivisions have legislative powers of their own.

The question here is whether or not the Legislature has occupied the field of public health to the exclusion of political subdivisions. See Associated Dairy Products Co. v. Page, 68 Ariz. 393, 206 P.2d 1041, where it was held that the Legislature had occupied the field of milk and milk products regulation to the exclusion of legislation by the county board of supervisors. See Woodward v. Fox West Coast Theaters, 36 Ariz. 251, 284 Pac. 350, as to the limitation upon the legislative power of a municipality to those powers conferred by law and reasonably implied from their express powers.

The question as to occupation of the field is readily answered by Section 68-112(d), ACA, 1939, as amended, and Section 68-214(b) (4) and (6), ACA, 1939, as amended, wherein counties are expressly authorized to legislate (within certain limitations) on the subject of local public health. Such expressly conferred legislative powers upon an administrative body are obviously not an improper delegation of legislative powers to an administrative body. The phrase "not inconsistent with" in Section 68-214(b) (4), supra, is merely an expression of general law. See Clayton v. State, 38 Ariz. 135, 297 Pac. 1037, where it was held that legislation by municipalities must be construed in connection with state laws, and must be consistent therewith.

The references in Section 68-214(b)(6), supra, to the rule-making power of the local board is nothing more than conferring express legislative power upon local legislative bodies - the county board of supervisors. Such legislation, not inconsistent with state laws and proper regulation issued pursuant thereto, must be sustained. The Legislature has occupied the state-wide field and expressly conferred power upon local subdivisions to occupy the local field.

Therefore the answers to the three queries are as follows:

1. Local health legislation must not contradict or contravene valid state regulations promulgated pursuant to state law.
2. Yes, if the limitations provided in Section 68-112(d) and the procedure in Section 68-214(b)(6) are observed.
3. No. They have their own rule making power under Section 68-214(b)(4)(6), supra, as limited by Section 68-112(d), supra.

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