OFFICIAL OPINION NO. 10

March 10, 1950.

L. E. Burney, M.D.,
State Health Commissioner,
State Board of Health,
1098 West Michigan Street,
Indianapolis 7, Indiana.

Dear Dr. Burney:

I have your letter of recent date in which you ask for an Official Opinion upon the following questions:

"(1) When the State Board of Health has received certification of the appointment of a local health officer by duly constituted appointing authorities does the State Board of Health have a right to delay approval upon the request of a majority of the appointing authority? (In this case, on the basis that they wished to change their mind.)"

"(2) Does the appointing authority, in this case the county commissioners, have the right to change an appointment after their meeting is completed without bringing just cause before final approval by the State Board of Health and before the appointee has actually taken office?"

"(3) Should a local health officer assume his functions, including the taking over of books and other property of the health jurisdiction, immediately upon appointment by the appointing authority or should the incumbent continue in office until the appointment by the local authority has been approved by the State Board of Health? (For your information the practice has been the former.)"

I am informed that these questions arise out of a situation where a Board of County Commissioners appointed a part-time county health officer and forwarded a certificate of appointment, proper upon its face, to the State Board of Health,
and thereafter on the date of the next meeting of the State Board of Health there was received a request from a majority of the members of said Board of County Commissioners stating that possibly an error had been made in the appointment and asking for an opportunity to correct the error and indicating that another appointee would be named. This, in effect, is a statement that the Board of County Commissioners expected to reconsider the prior appointment and perhaps make a different appointment.

I desire to consider and answer your second question first for the reason that the answer to that question will determine the answer to the other two questions.

The sections of the statute involved are, Section 450 and Section 451 of Chapter 157 of the Acts of 1949, same being Burns 35-601 and 602. Said sections are as follows:

"The board of county commissioners of each county of this state shall appoint a part-time county health officer except where such county has a full-time health officer or is a part of a unit which has a full-time health officer. Such part-time county health officer shall hold an unlimited license to practice medicine in Indiana and be suitably trained in sanitary science. Such appointment shall be subject to the approval of the state board. Such part-time county health officer may be removed by the board of county commissioners for any cause for which he could be removed by the state board of health." Burns' Section 35-601.

"The part-time county health officers in office on the date this act becomes effective, shall, unless sooner removed, continue to serve until their respective terms expire, and until their successors have been appointed and have qualified. Beginning on the first day of January, 1950, and on the first day of January of each fourth year thereafter, a county health officer shall be appointed, as aforesaid, to serve for a term of four (4) years, unless sooner removed by the appointing authority, or by the state board. Should the state board fail to approve the appointment of the person appointed for county health officer, or should the state board, or the appointing authority, remove any such officer,
another appointment other than the person removed or
rejected, shall at once be made in the same manner. A
person appointed to fill a vacancy shall serve for the
unexpired term.” Burns’ Section 35-602.

The general rule is that an appointment to an office when
made and completed is not subject to reconsideration or rev-
ocation. This rule applies in instances where the appointment
is made by a collective body such as a board of county
commissioners.

Weir v. The State ex rel. Axtel (1884), 96 Ind.
311, 312;
State, ex rel. Sauter, et al. v. Richey, et al. (1930),
202 Ind. 116;* 

However, a different conclusion results where for some
reason the appointment has not been final and complete so as
to entitle the appointee to qualify for the office. Where an
appointment is thus not completed, it may be reconsidered or
rescinded by the appointing body.

Board of Education v. McChesney, (1930), 235 Ky.,
692; 32 S. W. (2nd) 26:

“An appointment to office may be revoked, of course,
at any time before the act becomes final.”


Where a constitutional or statutory provision requires that
an appointment to a designated public office be approved by
some other body or official other than the appointing power
the appointment is not complete and the appointee is not
legally entitled to the office until such approval is had as it
takes the action of both bodies to make a completed
appointment.

Schulte v. City of Jefferson, (1925), 221 Missouri
App. 369-372;
Parish v. St. Paul, 84 Minn., 426;
In 42 Am. Jur., Public Officers, Section 111, p. 962, it is said:

"Constitutional or statutory provisions may require appointments to public office or to certain designated offices to be approved or confirmed by some body other than the appointing power; and until this is done the appointee may not be legally entitled to the office, and the former incumbent of the office may hold over until such confirmation of his successor's appointment is had."

Under the sections of Chapter 157, above quoted, the part-time local health officer in office on July 1, 1949, the effective date of said act, would remain in office until his term expired on January 1, 1950 and thereafter until his successor had been appointed and had qualified.

It is therefore my opinion in answer to your second question, that the appointment made by the county board of commissioners in question at their January meeting, was not complete until it had been approved by the State Board of Health and that said board of county commissioners could therefore reconsider or revoke such appointment or appoint a different appointee until such time as the appointment became complete and final by the approval thereof by the State Board of Health. Such reconsideration, revocation or new appointment could be done without a proceeding for removal of the appointee for cause, for the reason that he had not yet become entitled to the office of part-time county health officer.

In answer to your first question, when the State Board of Health has received a certificate of the appointment of a local health officer which is regular upon its face, it should act thereon within a reasonable time. No specific time can be given in exact number of days but it would include such time as is reasonably necessary to make a proper investigation of the qualifications of the appointee. Action should be upon such appointment at the next meeting of the Board of Health following such due investigation as would enable the board to act advisedly. It is my opinion that notification by the appointing board or a majority of the members thereof which is in effect notice that an error had possibly been made and that they were expecting to reconsider and make a different ap-
pointment, which notification is received on the same day as the meeting of the approving board, is sufficient justification to delay action, for investigation at least, until the next regular meeting.

Your third question has been answered by my answer to your second question. The new appointee cannot qualify and take over the records, property and jurisdiction of such an officer until his appointment has been approved by the State Board of Health and in the meantime his predecessor will hold over in such office until such approval is given and the appointee qualified.

OFFICIAL OPINION NO. 11
February 14, 1950.

Hon. P. E. Middleton,
Indiana Economic Council,
140 North Senate Avenue,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter requesting my opinion which reads in part as follows:

"A question of great importance to Indiana communities has arisen with respect to interpretation of legislative interest in certain provisions of the Indiana Housing Act of 1937, as amended by Chapter 374, Acts of 1947.

Section 48-8108 (b), Burns Indiana Statutes, Act of 1933, 1947 Supplement reads as follows:

'(b) Within its area of operations: To prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; Provided, however, That no housing project shall be built if the average construction cost is more than one thousand five hundred dollars ($1,500.00) per room, exclusive of the cost of land,