

## OPINION 40

### OFFICIAL OPINION NO. 40

December 23, 1971

Hon. John R. Sinks  
Indiana State Representative  
13311 West Hamilton Lane  
Fort Wayne, Indiana 46804

Dear Representative Sinks:

This is in response to your request for my Official Opinion concerning whether the State Board of Health is required to contract with local Boards of Health with reference to employment of personnel for the administration of the Acts of 1967, Ch. 301, as found in Burns' (1969 Repl.) Section 35-2571, *et seq.*, and IC 1971, 16-6-6, *et seq.*, commonly called the "Milk Act."

#### ANALYSIS

Local health departments are given no responsibility or authority whatever in the administration or enforcement of the Act and are seldom mentioned or referred to in the text of the statute. The Indiana Public Health Code (Acts of 1949, Ch. 157), and Section 200 in particular, as found in Burns' 35-201, provides that "the state board of health is the superior health board of the state, to which all other health boards are subordinate."

The statutory language on which the answer to your question turns is:

"The state board *shall* \* \* \* negotiate \* \* \* agreements with such local health departments *as may be necessary in the opinion of the board* to further the provisions herein provided for the proper administration of this act." Burns' 35-2585. (My emphasis)

Notwithstanding the Legislature's use of the word "shall," it was nevertheless the legislative intent to repose in the State Board of Health full discretion and authority to make a determination as to whether such agreements are, in fact, "necessary" to further the provisions of this Act. The State Board

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of Health is not "required" to contract with local boards of health until such a determination is made.

### CONCLUSION

It is my official opinion, therefore, that the Milk Act (Burns' 35-2571, *et seq.*) and particularly the statutory language of Burns' 35-2585, *supra*, as it relates to the purposes and intent of the whole Act, make it clear that the State Board of Health is under no statutory requirement or other obligation to contract or to conclude agreements with local boards of health in reference to the employment of personnel for the adequate and efficient administration and enforcement of the statute unless and until the State Board comes to an opinion, in the exercise of its own sound administrative discretion, that such agreements "may be necessary."