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OFFICIAL OPINION NO. 31

December 5, 1966

**STATE BOARD OF HEALTH—Full Time County or Local  
Board of Health—Where Approval of Board of County  
Commissioners is Sufficient to Charge Fees for  
Statutory Services—Necessity of Consent  
of Common Council of City.**

Opinion Requested by Dr. Andrew C. Offutt, State Health  
Commissioner.

I am in receipt of your recent inquiry concerning the establishing of fees for the performance of certain services by local health units. Your specific question was:

“Assume the existence of a county in which the only local health board is the county board of health, and the county board is a full time department that operates throughout the county. If the county commissioners of this county were to permit the board to establish fees for the performance of specified statutory services, would the board be able to collect such fees for performing such specified services in the cities and towns located within the county even if the common councils of such cities and towns did not approve?”

The fees with which your question is concerned are those authorized by Acts 1949, ch. 157, § 423, as added by Acts 1965, ch. 358, § 11, the same being Burns IND. STAT. ANN., § 35-524, which provides:

“The board of each local health department may, with the approval of the board or boards of county commissioners and/or the common council of any city or cities involved, establish and collect fees for specific services and records as established by local ordinances

and state law: Provided, That such fees shall not be in excess of the cost of services rendered. Such fees shall be accounted for and transferred to the health fund of the taxing jurisdiction."

The manner in which the above statute describes the governing body which must give approval is somewhat confusing. This confusion, however, is eliminated when other statutes relating to local boards of health are considered.

Acts 1949, ch. 157, § 400, the same being Burns IND. STAT. ANN., § 35-501, provides:

"Powers and duties described in this division pertain to all local health officers whether full-time or part-time and local health boards. *The powers and jurisdiction of a local health officer or local board are limited to the area in which they serve.*" (Emphasis added.)

The preceding section establishes the furthestmost limits of a local health board's jurisdiction, although it does not establish the exclusiveness of the board's jurisdiction. In other words, the statute provides that a county health board does not have jurisdiction outside the county, but does not determine whether the board has jurisdiction throughout the county. A different section of the same act answers the latter question. Acts 1949, ch. 157, § 612, the same being Burns IND. STAT. ANN., § 35-813, provides:

"A full-time county or multiple-county health board or its officers shall not have jurisdiction in any city having a full-time health department."

The principle of statutory construction known as *expressio unius, exclusio alterius* is applicable to the above provision. The removal of cities and towns from the jurisdiction of a full-time county health board under specified conditions implies that absent such conditions the county board has jurisdiction. Therefore, it would appear that the county health board could collect the fees no matter what action the common council of the cities and towns involved might take in the matter.

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A somewhat similar situation exists in relation to taxes levied in relation to a county health department. Acts 1949, ch. 157, § 611, the same being Burns IND. STAT. ANN., § 35-812, provides, in part:

“The county council of any county in which a full-time health department has been authorized or the county council of any county which has become a part of a multiple-county full-time health department, . . . shall levy annually therefor, even though it be in excess of any limitation on tax rates, a tax . . . which tax shall be levied and collected in like manner as other taxes are collected. . . . However, no tax levy provided for in this article shall be made upon property within the corporate limits of any city maintaining its own full-time health department.”

It would appear that both in levying taxes for the benefit of the county health department and in establishing fees to be collected by the county health department the county authorities may determine that residents of cities and towns will pay such taxes or service fees in all instances where the city does not maintain its own full-time health department.

The confusing language concerning the governing body which must approve the establishment of fees is apparently the result of the Legislature's desire to include the governing bodies of all of the many different forms of local health departments within the statute. Chapter 157 of Acts 1949, as amended, as contained in Title 35 of Burns IND. STAT. ANN., in its several sections authorizes various levels of local governing bodies to establish health departments independently or in conjunction with other local units. Section 604 of the Act, Burns § 35-805, provides for a single county health department; § 605, Burns § 35-806, provides for a multiple-county health department comprising two to four adjacent counties; § 613, Burns § 35-814, provides for health departments in certain cities; § 616, Burns § 35-817, provides for a joint city-county health department under certain circumstances. It was obviously the Legislature's intent to provide that the fees must be approved by the appropriate gov-

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erning body, no matter which of the many possible forms of health department is involved.

In conclusion, it is my opinion that when a full-time county health department is the only health department in the county the approval of the board of county commissioners of a fee schedule for services performed by the health departments makes the schedule effective within all the cities and towns located within the county.

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OFFICIAL OPINION NO. 32

December 6, 1966

**STATE BOARD OF HEALTH—Air Pollution Control  
Board—Authority to Proceed in Area Having  
Local Air Pollution Control Legislation.**

Opinion Requested by Dr. Andrew C. Offutt, State Health Commissioner.

I am in receipt of your recent request for an opinion concerning the enforcement procedures to be followed by the Air Pollution Control Board. Your specific question is:

“What is the procedure to be followed by the Air Pollution Control Board in relation to a complaint filed against an alleged offender located within an area that has adopted some sort of local ordinance pertaining to air pollution?”

Air pollution control in the State of Indiana is established by Acts 1961, ch. 171, the same being Burns IND. STAT. ANN., §§ 35-4601 through 35-4608. This Act created the Air Pollution Control Board and prescribed the functions, powers