

Opinion No. 19-2364

September 24, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Dr. C. E. Waller, Commissioner, Department of Health, Santa Fe, New Mexico.

State Board of Health Clothed With Authority to Prohibit Pollution of Streams, Lakes, Etc.

OPINION

We have your letter of the 18th instant, requesting an opinion from this office regarding the power of the State Board of Health to regulate and prohibit the pollution of streams, ditches, acequias, lakes, reservoirs and other bodies of water with sewage or other dangerous contamination, and the power to declare the same to be a public nuisance, and to provide penalties for violation of such regulation.

We are of the opinion that the provisions of section 10, Chapter 85, Laws 1919, are sufficiently broad to give the State Department of Health the powers to regulate the matters suggested in your letter, and to prohibit the same, and in the event of a violation of the regulations, to declare such violations to be nuisances.

The Health Law, in section 21, provides a penalty to be imposed upon persons who commit nuisances, and therefore it would not be necessary for the Board to provide any additional penalties; in fact, in our opinion the Board, by reason of the penalties prescribed in the act, would be prohibited from making any regulations or rules which would impose additional or other penalties than those prescribed.