

Opinion No. 32-454

April 29, 1932

BY: Quincy D. Adams, Asst. Attorney General

TO: Dr. J. Rosslyn Earp, Director, Bureau of Public Health, Santa Fe, New Mexico.

{*159} This is in regard to your letter of April 28, 1932, in which you inquire what action is necessary to {*160} remove a County Health Officer.

In view of the language of Section 110-312, 1929 Code, it would seem to me that the State Board of Health has power to remove for cause a County Health Officer, after notice and hearing. The exact words of the statute are that "Each board of county commissioners shall appoint and employ one county health officer, whose appointment and employment shall be subject to approval by the state board of public welfare."

By taking action to remove such county health officer it would seem to me that his employment no longer has the approval of the state board, and the office is thereby made vacant.

This section also provides that he shall be under the "supervision and control" of the state department of public welfare. Such control would mean little unless the department had power to remove him for cause.

There might possibly arise in some cases a dispute as to whether or not the power of removal is vested in the board of county commissioners. In such event the question would, no doubt, have to be tested in court. I can not say what the court would decide, but I believe it would uphold the power of the state board to remove for cause without the concurrent action of the board of education.

In the present case, if you wish to avoid all doubt, I suggest that you have the board of county commissioners also adopt a resolution removing this officer.