

Opinion No. 41-3929

October 23, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Dr. James R. Scott, Director Department of Public Health Santa Fe, New Mexico

{*114} By your letter of October 15, you request our opinion as to whether or not the jurisdiction lies with the State Department of Public Health or with the District Health Board to conduct hearings relative to charges filed against any District Health officer, looking toward some disciplinary measures, or the discharge of such health officer.

This office has heretofore ruled upon the matter in Opinion No. 3711, written to C. H. Douthirt on February 11, 1941. Said opinion quoted Section 3, Chapter 131, Laws of 1935, as follows:

"Each District Health Board shall appoint and employ one district health officer whose appointment and employment shall be subject to the approval by the State Board of Public Welfare."

The opinion above referred to also cites Board of County Commissioners of Colfax County, et al., vs. Department of Public Health, 44 N.M. 189, 100 P. (2d) 222, in which the Supreme Court held that the power of the Board of County Commissioners to employ a county health nurse with the approval of the State Board carried with it the power by the Board of County Commissioners to discharge such county health nurse, and that the State Board had no jurisdiction to discharge such employee of the county once their approval of the appointment of such person had been given.

In view of the case above cited and the opinion referred to, I believe the District Health Board and not the State Board should conduct hearings, and if such hearings should result in a discharge, the District Health Board, and that Board only, would have authority to discharge the District Health officer for cause. There may be an implied power resting in the State Board to conduct hearings based thereon to reprimand the District Health officer or to recommend his discharge to the District Health Board.

However, since the State Board has no authority to discharge such District Health officer, it occurs to me that the proper authority to conduct the hearings is the District Health Board. If the charges filed against the District Health officer are of a criminal nature, then said District Health officer can be prosecuted in the district court.

Trusting that the foregoing sufficiently answers your inquiry, I am