

**STATE DEP'T OF HEALTH V. SAN MIGUEL COUNTY, 1921-NMSC-019, 26 N.M.
634, 195 P. 805 (S. Ct. 1921)**

**STATE DEPARTMENT OF HEALTH
vs.
SAN MIGUEL COUNTY**

No. 2549

SUPREME COURT OF NEW MEXICO

1921-NMSC-019, 26 N.M. 634, 195 P. 805

January 27, 1921

Appeal from District Court, San Miguel County; Leahy, Judge.

Action by the State Department of Health against the County of San Miguel. Judgment of dismissable, and plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

1. The approval of the state department of health is a prerequisite to invest the nominee for county health officer name by the board of county commissioners of a county with authority, and without said approval there can be no such officer qualified to act. P. 638
2. The disapproval by the state department of health of the nominee for county health officer and the failure, neglect, or refusal to nominate one who is approved by the state department of health constitutes a failure, neglect, and refusal of the local health authorities to do the work which chapter 85, Laws 1919, designates shall be done by the state department of health, and authorizes said state department of health to perform such work at the expense of the county. P. 638

COUNSEL

O. O. Askren, Atty. Gen., and N. D. Meyer, Asst. Atty. Gen., for appellant.

Chas. W. G. Ward, of East Las Vegas, for appellee.

JUDGES

Raynolds, J. Roberts, C. J., and Parker, J., concur.

AUTHOR: RAYNOLDS

OPINION

{*635} {1} OPINION OF THE COURT. On August 4, 1920, the state department of health presented a claim to the board of county commissioners of San Miguel county against said county in the amount of \$ 364.59, for services rendered and materials furnished by said department of health to said county in the performance of health work, the enforcement of the health laws of the state of New Mexico, and the rules and regulations promulgated by said department of health. This claim was rejected by the board of county commissioners. On August 30, 1920, the state department of health filed a notice of appeal from the action of said board of county commissioners in disallowing said claim, and also filed a petition in the district court in the furtherance of said appeal. Appellee joined issue by answer. A hearing was had and on September 24, 1920, the court found in favor of the appellee and dismissed appellant's petition. From the judgment dismissing the case by the district court appeal was taken to this court. {*636} The questions involved in this case are found in a consideration of the so-called "health act" of 1919, being chapter 85, Laws 1919. Section 12 of said act provides that each board of county commissioners shall appoint one health officer, whose appointment shall be subject to the approval of the state department of health, etc. Section 10 of the act, which will be set out in full later, provides the state department of health shall perform work of the local health authorities, where they fail, neglect, or refuse to do so, at the expense of the county or municipality affected.

{2} This controversy arose from the fact that the state department of health, the appellant here, claimed the right to perform certain work for the county of San Miguel and charged the expense to said county when the local health authorities had failed, neglected, and refused to perform the work. It appears from the record that Dr. G. N. Fleming was appointed health officer for the county of San Miguel by the county commissioners, subsequent to the enactment of chapter 85, Laws 1919. The appellant department of health was not notified of this appointment, but disapproved it, and so notified the county commissioners when it learned that said Fleming had been appointed. The appellant on May 4, 1920, appointed another physician, one Dr. D'Armours, to perform the health work in San Miguel county. The cost and expense incurred by the state department under the arrangement with Dr. D'Armours in connection with his work between May 4th and July 31st was the amount of the bill presented to the county commissioners i. e., \$ 364.59.

{3} The single question involved here is the construction of section 10, c. 85, Laws 1919, involving the authority of the state department to act in the present case. It is contended by the appellant state department of health that the local health authorities under said section failed, neglected, and refused to perform certain work, and that because of such failure, neglect, and refusal to perform the state department of health had {*637} the right to perform said work and to charge the same to the county. It appears, as is shown by the above statement of facts, that the county commissioners did not appoint a health officer whose appointment was approved by the state

department of health, and the sole question is whether such action in naming or appointing a physician whose appointment was disapproved by the department of health is such a failure, neglect, and refusal of the local health authorities to do the work outlined in section 10, above referred to, as to authorize the state department of health to do the work at the expense of the county. Said section 10 is as follows:

"Sec. 10. **Powers.** The state department of health shall have supervision of the health of the citizens of the state and possesses all powers necessary to fulfill the duties prescribed by law with respect thereto, and to bring actions in courts for the enforcement of health laws and the rules, regulations and orders promulgated thereunder by the State Board of Health. It shall be the superior health authority of the state and have power to investigate, control and abate the causes of diseases, especially epidemics, sources of mortality and the effects of localities, employments and other conditions upon the public health; to inspect public buildings, institutions and premises and industries; to establish, maintain and enforce quarantine; to close theaters, schools and other public places and to forbid gatherings when necessary for the protection of * * * health; to abate nuisances; to regulate and prescribe the location of plumbing, drainage, water supply, sewerage and waste disposal, lighting, heating, ventilation and sanitation of public buildings; to collect, compile and tabulate reports of marriages, births, deaths and morbidity and to require from any person having information with regard to the same to make such reports and submit such information as it shall by regulation provide; to co-operate with federal health authorities in the carrying out of measures for the protection of the public health and to incur expenditures in that behalf; to regulate the disposal, transportation, interment and disinterment of the dead; to make laboratory investigation of public health matters and maintain facilities for the purpose; to disseminate public health information; to prevent infant mortality; to prescribe prophylactic treatment in cases of infection for the prevention of infant blindness; promote child hygiene; to regulate the sanitation and safety for consumption of milk, meats and other foods; to supervise the work of local health authorities; to promulgate rules and regulations governing the same, and to perform the said work in case said authorities fail, neglect or refuse to do so, at the expense of the county or municipality affected."

{*638} {4} Chapter 85, Laws 1919, is entitled:

"An act concerning the public health; creating state, county and municipal health authorities and prescribing their powers, duties and compensation; fixing the penalties for violations; providing for raising of funds to meet emergencies, upon the credit of the state."

{5} The evident purpose of the act considered as a whole is to give jurisdiction and power to the state department of health in all cases and for all purposes designated in section 10 above quoted. In order that the action of the state department of health shall be uniform throughout the state and its rules and regulations carried out accordingly, the act contemplates that the appointment of county health officers must be subject to its

approval under its control and supervision. Section 12, giving the veto power to the state department of the county health officers appointed by the boards of county commissioners, bears out this construction of the act. The state department, under section 12, has the power to approve or disapprove the appointment made by the board of county commissioners, and until the appointment is approved by the state department there is no such officer as the county health officer provided for in the act.

{6} It follows that an appointment made by the county commissioners which the state department has not approved prevents the work which the state department is authorized to perform under section 10 from being performed in the manner required by law, and the failure of the state department of health to approve of the appointment made by the county commissioners constitutes, in our opinion, a failure, neglect, or refusal of the local health authorities to perform the work outlined in section 10, and gives the right and authority to the state department of health to perform the work at the expense of the county.

{7} We therefore conclude that the court erred in dismissing the petition. The case is reversed and remanded, {639} with instructions to award appellant a new trial; and it is so ordered.