CHAPTER VI

HEALTH OFFICERS AND EMPLOYEES

A HEALTH officer is defined in Webster's Dictionary as "one charged with the enforcement of the sanitary laws." Legally, this definition is an apt one, but actually the modern health officer is more than a civil agent for the enforcement of laws. He is the guardian of the health of the State or of a community of the State. As such, his duties are advisory and educational as well as executive. He is the agent, director, and expert advisor of the health department and sometimes he *is* the health department. He is, furthermore, the health advisor and health supervisor of the people who are under his legal jurisdiction.

The modern health officer must, therefore, be not only a sage and capable administrator of laws, but a scientist, a statesman, an educator, and a human engineer. Public health work today is a distinct specialty. It is not a branch of medicine or of engineering or of biology, although it draws from these arts and sciences as well as from many others. The modern sanitarian must be specially trained in his profession. A health officer is a qualified sanitarian in an administrative capacity, the holder of an office conferred by an act of governmental power.

The Office

An office is a special duty, charge, trust, or position conferred by an exercise of governmental authority for a public purpose. An officer is a person who legally holds an office, and who is thereby entitled to the tenure, duration, duties, and emoluments embraced by it. Any public office is a public trust, conferred not for the benefit of the holder, but for the benefit of society.

An office is to be distinguished from an employment, which is an occupation in another's service, usually under a contract. An officer or official possesses some degree of governmental authority, whereas an employee is merely a workman in the service of an employer, whether that employer be the State, a municipal corporation, or a natural person or private corporation.

Federal, state, district, county, and municipal health officers are almost always officers and not employees. Members of boards of health are likewise officers. The assistants of the health officer, appointed by him or by the board of health, usually are employees, although occa-

sionally a subordinate in a health department may be an officer if his position has been created and defined by law. An office is more or less permanent, subject only to change by the legislature, but an employment is transitory. Officers may change, but the office endures.

All local health officers are, furthermore, officers of the State. Their jurisdiction is, of course, confiined to their own communities or to the areas designated by law, but they are, nevertheless, official agents of the State since they are officers of political subdivisions of the State.[1]

The distinction between officers and employees in public health work is of importance for several reasons, although in the practical operation of public health activities, the people affected are seldom concerned with or bothered by the distinction. Not only is there a difference in the authority of an officer and an employee, but there are significant differences in the financial status, tenure of office, liability, and discretionary powers of each. An officer may delegate certain activities to others who are acting under his direction, but he cannot delegate the discretionary power conferred by law upon him as a ministerial officer.

Where a state law provided that in any city health district the board of health shall appoint for whole-time or part-time service a health commissioner and may appoint such public health nurses, clerks, physicians, guards, and other employees as they deem necessary, it was held by the Supreme Court of Ohio that the health commissioners thus appointed were employees and not public officers, thus permitting them to come within the provisions of the General Code which stated that present employees of city health districts and departments shall continue to hold their positions until removed in accordance with the civil service laws.[2]

The Appointment of Health Officers

In order to hold an office and be entitled to it, a person must be legally elected or appointed to the office. Health officers are usually appointed in accordance with methods set forth in the statutes. Thus, some state health officers are appointed by the Governor, often with the consent of the Senate or Governor's Council, while others are appointed by state boards of health, the members of which are ap-

1. *White* v. *City of San Antonio* (1901), 94 Tex. 313, 60 S.W. 427. *Brodman* v. *Rade* (1925), 101 N.J.L. 207, 127 A. 249.

2. *Scofield* v. *Strain* (1943), 142 Oh. St. 290, 51 N.E. (2d) 1012.

pointed by the Governor.[3] If the state health officer is not appointed by the Governor, he cannot, as a rule, be suspended or removed by that executive.[4]

Various systems are now in force for the appointment of local health officers. Municipal health officers are sometimes appointed by mayors or city managers, sometimes by boards of health, and sometimes by state health departments.[5] In a number of States, the appointment is made by the mayor or local board of health but must be approved by the state health department[6] or the state health officer; or the person appointed must possess qualifications for the office which have been set by the state health department in accordance with legislative authority. Whatever may be the statutory requirements for the appointment of local health officers, they must be rigidly complied with in making the appointment.[7]

A procedure for the appointment of local health officers has been suggested in a Model Health Code prepared by a committee of the American Public Health Association, as follows:

Regulation 1. There shall be a health department in the (City of ....., Town of .....) under the direction of a Health Officer. He shall be appointed by the Mayor, subject to the approval of the state health authorities. He shall be subject to removal by the Mayor, but may have a public hearing if he desires. He shall be suitably trained or experienced in public health administration. He shall devote his full time to the duties of his office. He shall execute and enforce all statutes, ordinances, and regulations for the protection and promotion of health and shall take such other action as is necessary for the public health. He shall have the power to appoint and remove, and fix the duties of such other employees as are necessary for the administration of the health department. He shall have the power to fix the salaries of the employees of the health department, subject to the approval of the legislative authorities of the (City of ....., Town of .....).

Not all sanitarians and political scientists are agreed that appointment and removal of the health officer by the mayor is always the

3. See page 60. *Perkins* v. *Hughes* (1939), 53 Ariz. 523, 91 P. (2d) 261.

4. *In re Advisory Opinion to the Governor* (1919), 78 Fla. 9, 82 So. 608.

5. *Davock* v. *Moore* (1895), 105 Mich. 120, 63 N.W. 424, 28 L.R.A. 783. *McCullers* v. *Wake County* (1912), 158 N.C. 75, 73 S.E. 816, Ann. Cas. 1913 D 507.

6. *State Department of Health* v. *San Miguel County* (1921), 26 N.M. 634, 195 P. 805.

7. *Braman* v. *New London* (1902), 74 Conn. 695, 51 A. 1082. *Keefe* v. *Union* (1903), 76 Conn. 160, 56 A. 571. *Valle* v. *Shaffer* (1905), 1 Cal. App. 183, 81 P. 1028. *Young* v. *City of Ashland* (Ky. 1910), 125 S.W. 737. *State ex rel. Blue* v. *Waldo* (1928), 222 Mo. App. 396, 5 S.W. (2d) 653.

best procedure. This method is often in effect in the larger cities, but in smaller communities the appointment is more frequently made by the board of health.

The appointment of a health officer should be made in writing, or there should be on file a resolution or official document which records the appointment. It has been held that an appointment by drawing lots among board members, where there was a tie vote, is an invalid method.[8] If the health officer is required to take an oath of office, failure to do so will invalidate his appointment.[9]

Health officers are sometimes given a civil service status, either at the time of appointment or after the lapse of a certain number of years in the office. Employees are often under civil service. The tenure of office depends upon the terms of the statutes, or, if no provision is made in the law, upon the will of the board or executive official who makes the appointment.[10]

De Facto Officers

An officer who is not properly and legally appointed, but who holds office under the supposition that he is so appointed and whose occupation of the office is acquiesced in by the public, is called a *de facto* officer in distinction to a *de jure* officer who is properly appointed. The acts of a *de facto* officer are given the same faith and credit as a *de jure* officer, but the former runs the risk of being unable lawfully to recover compensation for his services, and he is also civilly liable for damages due to negligence in the performance of his duties. There are several other drawbacks to this status, so that it is eminently desirable that appointments be proper and legal.

Qualifications of Health Officers

Qualifications for state and local health officers are usually set forth in statutes pertaining to the organization of health departments, although in some States no special qualifications are required of holders of these offices. A frequent legal requirement is that the health officer should be a medical graduate or a licensed physician. Occasionally, the health officer is required to be suitably versed in sanitary science and public health, whether he is a physician or not. Women having the proper qualifications are eligible for appointment as health of-

8. *Meany* v. *Staehle* (1915), 160 Wis. 452, 152 N.W. 165.

9. *People ex rel. Walton* v. *Hicks* (1916), 158 N.Y.S. 757, 173 App. Div. 338, affirm. (1917) in 221 N.Y. 503, 116 N.E. 1069.

10. *State* v. *Seavey* (1894), 7 Wash. 562, 35 P. 389.

ficers. Another common, if illogical, requirement is that the health officer should be a citizen and resident of the community at the time of the appointment, and sometimes for a stated period prior to the appointment.[11]

An authoritative statement regarding the desirable qualifications of municipal health officers is given by the committee on Administrative Practice of the American Public Health Association, as follows:

It is essential that the health officer be a sanitarian especially equipped by training and experience for administrative health work. Four years of successful experience as a health officer in a small city or as a bureau chief in a large city, or graduate instruction in public health leading to an M.P.H., a C.P.H., or a Dr.P.H. coupled with at least two years of experience in health administration, is considered a desirable minimum qualification. He should be well trained in the fundamental sciences and have a thorough knowledge of preventive medicine. There are many advantages if he is medically trained, although this training alone is not sufficient.[12]

A National Health Officers Qualifying Board of the United States Conference of Mayors recommended in 1938 the following standards for municipal health officers.

Grade I (applicable, in general, to cities of 500,000 population and over). Graduation in medicine from a Grade A medical school and not less than 6 years' full-time experience in public health work, 3 years of which must be in a responsible administrative position; 2 of the 3 years of general experience may be substituted by a course in public health of not less than one scholastic year in residence at a recognized institution of learning.

Grade II (applicable, in general, to cities of from 100,000 to 500,000 population). Graduation in medicine from a Grade A medical school and not less than 4 years' full-time experience in public health work, 1 year of which must be in a responsible administrative position; 2 of the 3 years of general public health experience may be substituted by a course in public health of not less than one scholastic year in residence at a recognized institution of learning.

Grade III (applicable, in general, to cities under 100,000 population). Graduation in medicine from a Grade A medical school and not less than 2 years of full-time experience in public health work, or, 1 year of such full-time experience and the completion of a course in public health of not less than 1 year in residence at a recognized institution of learning.[13]

11. *Nay* v. *Underhill* (1899), 71 Vt. 66, 42 A. 610.

12. I. V. Hiscock, editor, *Community Health Organization*, 3d ed., New York, Commonwealth Fund, 1939, p. 34. See Proposed report on the educational qualifications of health officers, *Am. J. Pub. Health*, 36:904, August 1946.

13. *Am. J. Pub. Health*, 28:110, January 1938. See *The Public Health Program*

(*Continued on next page.*)

Recognition in these standards of the need for adequate public health training of municipal health officers is generally approved, but many sanitarians disagree with the suggested requirement that health officers should invariably be graduates in medicine.[14] Many nonmedical sanitarians and public health workers have served with distinction and satisfaction as health officers of both large and small cities. A person holding the degree of Doctor of Public Health from a reputable institution is, in fact, fully as well qualified, professionally and technically, to serve as a health officer as is a Doctor of Medicine who has had adequate experience in public health work. A Doctor of Public Health is, likewise, more suitably trained for the position of health officer than is a medical graduate who has had no experience or training in public health. A qualified sanitary or public health engineer is, in general, in the same category as a Doctor of Public Health with respect to his technical ability to serve as a health officer of a municipality. In a county it is desirable that the health officer be a medical graduate.

While a knowledge of medicine is unquestionably a valuable asset to a health officer, and while theoretically the best qualified health official would be a physician who is also trained and experienced in public health work, a medical degree is by no means an indispensable requirement for health officers. A knowledge of public health is the indispensable element. A municipal health officer should, therefore, be either a graduate in medicine who has had the experience in public health set forth in the standards of the National Conference of Mayors, or a graduate with an advanced or special degree in public health from a recognized institution of learning.[15]

Under Title VI of the Social Security Act, Supplement No. 126, to *Pub. Health Rep.,* U.S. Public Health Service, 1937.

14. In June 1938, the Massachusetts Public Health Association adopted a resolution opposing the report of the National Health Officers Qualifying Board, in so far as it excludes properly trained and otherwise qualified nonmedical public health workers from serving as health officers. A number of other associations have adopted similar resolutions.

15. Recognized institutions offering public health training leading to postgraduate degrees (C.P.H., M.S., D.P.H., M.P.H., Ph.D., Sc.D., and Dr. P.H.) include Columbia University, Harvard University, Johns Hopkins, University of California, University of Michigan, University of Minnesota, University of North Carolina, University of Toronto, and Vanderbilt University. In the past the Massachusetts Institute of Technology was also one of the leading institutions offering such degrees. Many other recognized universities and colleges offer degrees in sanitary engineering and other specialties. See Public health degrees and certificates granted in 1944-1945, *Am. J. Pub. Health,* 35:1311, December 1945.

Sanitarians and political scientists are agreed that the requirement of residence in the community where the health officer is appointed is an unnecessary and undesirable restriction. In order to secure a suitably qualified person for the important position of municipal health officer, it may be necessary and desirable to select a candidate from another community or another State. Such a system tends to minimize the dangers of purely political appointments, since merit for the position should be the sole criterion.

In a few States, local health officers, sanitary inspectors, and other health workers are required to be licensed by the state health department after passing a suitable examination. In other States, local health officers are required to possess qualifications specified by the state health authorities and cannot be appointed unless they conform to these requirements. The merit system for selection of health officers is discussed on page 75.

In 1942 it was reported that there were then in this country about 5,500 local health officers, out of a total personnel engaged in local health work of approximately 41,000. Four-fifths of these health officers and more than one-quarter of the entire personnel were serving on a part-time basis. Of the health officers, somewhat over 60 per cent were physicians. There were at that time more than 14,000 public health nurses serving with local health departments.[16]

Osteopaths as Health Officers

Where the law requires that a municipal health officer shall be a physician, the question as to whether an osteopath is eligible for appointment to this office depends upon the precise wording of the statutes, particularly those referring to the qualifications and duties of the health officer, the medical practice acts, and the laws governing the practice of osteopathy. If the laws under which osteopaths are licensed permit them to undertake a more or less unlimited practice, including the use of the drugs and biological products that may be necessary in public health work, and there are no other legal restrictions, such an appointment would seem to be valid.

The appointment of an osteopathic physician and surgeon as a health officer of a city of the third class in the State of Washington was upheld by the Supreme Court of that State in a decision handed down in 1930,[17] in which the court pointed out that although an osteo-

16. *Directories of City Health Officers,* issued annually by the United States Public Health Service.

17. *Walker* v. *Dean* (1930), 155 Wash. 383, 284 P. 756.

path held a limited license, he was a physician under the statutes in force at the time of his appointment as health officer. On the other hand, the appointment of an osteopath as a medical inspector of schools has been held, in 1929, to be invalid under laws in existence at the time the statute providing for school medical inspectors was adopted.[18] By a law of 1935, osteopaths in this State, New Jersey, are licensed under the Medicine and Surgery Act.

The right of a licensed osteopath to receive health and development credentials, qualifying the holder to perform certain health services for the school system, was upheld by a District Court of Appeals in California in 1939, the Court pointing out that this right had existed prior to 1922 when osteopaths were licensed by the Board of Medical Examiners, and should be continued during their licensure by the Board of Osteopathic Examiners.[19]

The attorney generals of Minnesota, Michigan, and West Virginia have ruled that osteopaths are eligible for appointment as local health officers in those States under existing laws. Osteopaths also serve by appointment, under statutes, on some state and local boards of health.

There was nothing in the training of chiropractors, sanipractors, or naturopaths in 1946, nor has there ever been anything in their training, that qualifies such healers to serve as health officers. Doctors of Veterinary Medicine are occasionally appointed as local health officers, although they, like Doctors of Medicine, should be specially trained in public health work in order to qualify for the position. The same may be said of dentists, pharmacists, and nurses, who have sometimes occupied or now occupy this office.

Compensation

The salary or compensation paid to a health officer is a privilege of the office, and is not based on a contractual relation, as is the case with an employee. The amount of the health officer's salary may be fixed by the statutes, or may be left to the discretion of the board of health. Sometimes a maximum or minimum figure is set by law. Where the amount is fixed by law, the health officer is entitled only to that

18. *Chastney* v. *State Board of Education* (1929), 7 N.J. Misc. 385, 145 A. 730.

19. *Jordt* v. *Calif. State Board of Education* (1939), 35 Cal. App. 591, 96 P. (2d) 809. See *Hecker* v. *Gunderson* (1944), 245 Wis. 655, 15 N.W. (2d) 788, and *State Board of Health* v. *Wilson* (Tex. 1945), 188 S.W. (2d) 999, upholding exclusion of osteopaths from participation in the Emergency Maternity and Infant Care program for wives and infants of service men under state plans approved by federal bureaus.

sum,[20] but where the amount is not regulated by law, the compensation of the health officer may be increased or decreased by the board of health or other governmental authority in charge during the incumbency of the health officer.[21] Where the salary is fixed by law, it may be changed by the legislature or other legislative body during the term of office,[22] unless there is a constitutional provision to the contrary. If the office is abolished by the governing authority, the salary ceases.[23] If the appropriating body of the municipality or other governmental agency fails to appropriate necessary funds to pay the salary of the health officer, it cannot be paid and he cannot collect it.[24]

Where, however, a state board of health fixed the salary of the state superintendent of health at an amount considerably in excess of the sum appropriated for the purpose by the legislature, it was held by the Supreme Court of Arizona that the sum fixed by the board should be paid, since the public health fund was derived not only from appropriations but also from receipts from other sources.[25] Mandamus was, therefore, granted against the state auditor for the payment out of "funds available therefor."

Minimum standards for the salaries of state and local health officers were suggested several years ago by a committee of the American Public Health Association, as follows:

a. Five thousand dollars should be the minimum salary received by a full-time qualified state health officer and from this figure it should increase up to not less than ten thousand dollars depending upon the population involved, industries, area, and length of service of the executive.

b. With regard to the salaries of chiefs of divisions in the state health departments, the Committee believes that it is difficult to set definite standards. The salary depends upon numerous factors, such as the training, experience, length of service, personality, and general qualifications of the individual, and also upon the type of work, population of state, magnitude of problems, and salary of his superior. The Committee believes, however, that no salaries less than three thousand dollars should be paid in any State to chiefs of divisions, and that in most instances more than this should be paid, bearing in mind the factors outlined above.

20. *Watts* v. *Princeton* (1911), 49 Ind. App. 35, 96 N.E. 658.

21. *Wallor* v. *Wood* (1884), 101 Ind. 138. *Perkins* v. *Panola* (Miss. 1902), 32 So. 316. *Fredericks* v. *West Hoboken Bd. of Health* (1912), 82 N.J.L. 200, 82 A. 528.

22. *Hard* v. *State ex rel. Baker* (1934), 228 Ala. 517, 154 So. 77.

23. *Fisher* v. *City of Paducah* (1934), 256 Ky. 300, 76 S.W. (2d) 21.

24. *Creek County* v. *Robinson* (1929), 140 Okla. 142, 282 P. 299.

25. *Manning* v. *Frohmiller* (1941), 58 Ariz. 405, 120 P. (2d) 416.

c. No qualified county health officer should receive less than $3,000 a year.

d. Minimum salaries of qualified municipal health officers for full-time work should be as follows, according to population:

Population	*Salary*
1,500,000 and above	$10,000
1,000,000 to 1,500,000	7,500
750,000 to 1,000,000	7,000
500,000 to 750,000	6,000
100,000 to 500,000	5,000
50,000 to 100,000	4,000
25,000 to 50,000	3,500
10,000 to 25,000	3,000
Less than 10,000	2,500

The minimum salaries of qualified chiefs of divisions in municipal health departments should be approximately three-fifths of the above scale.

Changing economic conditions may, of course, make these recommendations obsolete. Probably the figures given for health officers of cities in the lower population groups are now too low.

The Committee on Local Health Units of the American Public Health Association recommends that the salary of a medical health officer should not be less than the net income of the good surgeons and medical clinicians or internists of the community.

Litigation regarding compensation due or alleged to be due to health officers has often arisen and the courts have frequently been called upon to adjudicate such matters. It has been held that a county health officer, appointed according to law, is entitled only to the salary fixed in advance for his official services and cannot recover in legal action for services rendered, no matter how great.[26] The salary of a health officer should, in fact, be fixed in advance.[27] If it is determined in advance, the health officer is entitled to it, whether his duties were prescribed in a formal manner according to law or not.[28] He is entitled to his salary as long as he is not removed, whether he discharges his duties properly or not.[29] Where a statute says that the salary fixed by

26. *Yandell* v. *Madison County* (1902), 81 Miss. 288, 32 So. 918. *Halford* v. *Senter* (1915), 169 N.C. 546, 86 S.E. 525. *Creek County v. Robinson* (1929), 140 Okla. 142, 282 P. 299. *Dorough* v. *Carter County* (1937), 179 Okla. 109, 64 P. (2d) 851.

27. *Adams County* v. *Aikman* (1910), 57 Miss. 6, 52 So. 513.

28. *People* v. *Blood* (1907), 105 N.Y.S. 20, 120 App. Div. 614.

29. *People* v. *Sipple* (1905), 96 N.Y.S. 897, 109 App. Div. 788.

the appointing body should be a "reasonable" amount, the health officer has a right to appeal to the courts if the compensation is unreasonably meagre, but it must clearly appear that the salary is inadequate.[30] As a general proposition, a health officer is not entitled to extra compensation for performing duties which come within the scope of his office,[31] but extra compensation has been allowed for duties in addition to those for which he has been appointed.[32]

Where a physician is a part-time health officer, it is, as a rule, proper for him to conduct his own private practice. The provision for part-time health officers is not a wise one, however, and many instances are likely to arise which are on the border-line between official duties and personal ones.

When the regular term of a health officer expires, but he continues to serve pending the appointment of a successor or because of failure of such a new appointment, he is entitled to compensation for this service.[33] The person who holds legal title to an office is entitled to the legal right to the salary.

The salaries of public officers are not subject to garnishment, a sound principle on the grounds of public policy, nor can the unearned salary be assigned, according to the better rule. When an office is abolished the salary is automatically discontinued, unless the officer has a special arrangement to receive compensation for a definite period of time.

If the salary of a health officer is refused and he believes that such action is wrongful, a remedy is to go to court and bring an action of mandamus against the board or other supervising authority.[34] Mandamus is the legal action to compel a department or officer of the government (federal, state, or local) to perform a proper ministerial function which has been refused or neglected. A municipal corporation may also be sued for salaries withheld. The State may be sued

30. *Graves* v. *City of Paducah* (1905), 28 Ky. L. 576, 89 S.W. 708. *Trabue* v. *Todd County* (1907), 125 Ky. 809, 102 S.W. 309. *Butler County* v. *Gardner* (1906), 29 Ky. L. 922, 96 S.W. 582.

31. *Tabor* v. *Board of Supervisors of Berrien County* (1909), 156 Mich. 176, 120 N.W. 588. *Bourke* v. *Sanitary District of Chicago* (1900), 92 Ill. A. 333. *Sloan* v. *Peoria* (1902), 106 Ill. App. 151. *Reynolds* v. *Mt. Vernon* (1898), 50 N.Y.S. 473, 26 App. Div. 581; affirm. (1900) in 164 N.Y. 592, 58 N.E. 1091. *Brown* v. *Livingston County* (Mich. 1901), 85 N.W. 745.

32. *Allen* v. *De Kalb County* (Tenn. 1900), 61 S.W. 291. *Vandenbergh* v. *Town Board of Colonie* (1938), 4 N.Y.S. (2d) 434, 254 App. Div. 54.

33. *Mahoney* v. *City of Biddeford* (1931), 130 Me. 295, 155 A. 560.

34. *Clay* v. *Civil Service Commission* (1916), 89 N.J.L. 194, 98 A. 312.

only if it consents, but the appropriate fiscal officer of the State may be sued for withholding a salary that is due to an officer of the government.

In the conduct of his legal activities, a health officer is generally entitled to remuneration for necessary expenses that may be incurred. It has been held in Mississippi, however, that a county board of supervisors has no authority to pay the expenses of a health officer who attends a convention outside the county.[35] In some States there is definite statutory authorization for payment of the expenses of health officers in attending public health conferences, whether called by the state health authorities or other professional agencies, since attendance at such meetings and conventions is usually beneficial.

Powers and Duties

The health officer is the administrative officer and executive of the board of health or health department.[36] Where there is no board of health, the health officer or health commissioner stands in lieu of the board and exercises the authority that such a board would have.[37]

The functions and duties of health officers are those set forth in the statutes, usually including the enforcement of all public health laws, ordinances, and regulations; the organization and administration of the activities of the health department; the carrying out of the policies and orders of the board of health; the selection and supervision of the personnel of the health department; the preparation of the budget and responsibility for expenditures; advice and counsel to the board of health, the municipal government, and the people generally; and such specific activities as are necessary for the prevention and control of disease and the promotion of the health of the community.

"A health officer who is expected to accomplish results," said the Supreme Court of Wisconsin,[38] "must possess large powers and be endowed with the right to take summary action, which at times must trench closely on despotic rule."

35. *Miller* v. *Tucker* (1925), 142 Miss. 146, 105 So. 774.

36. *McAnaly* v. *Goodier* (1905), 195 Mo. 551.

37. *Commonwealth* v. *Collins* (1927), 257 Mass. 580, 154 N.E. 266. *Fisher* v. *Kelly* (1942), 289 N.Y. 161, 44 N.E. (2d) 413, affimg. 32 N.Y.S. (2d) 1018, 263 App. Div. 836.

38. *State ex rel. Nowotny* v. *Milwaukee* (1909), 140 Wis. 38, 121 N.W. 658, 133 A.S.R. 1060.

An outline of the legal powers and duties of health officers, written more than fifty years ago but impressively modern in its point of view, is the comprehensive statement of Parker and Worthington:

The general duties of a medical officer of health are such as naturally pertain to the office of the chief executive officer and adviser of the board of health. He should inform himself, as far as practicable, respecting all influences affecting or threatening to affect injuriously the public health within his district; he should inquire into and ascertain, by such means as are at his disposal, the causes, origin, and distribution of diseases within the district, and determine to what extent the same have depended on conditions capable of removal or mitigation; he must be prepared to advise the board of health on all matters affecting the health of the district, as to the means of preventing or removing nuisances and causes of disease, and as to the propriety of adopting general sanitary regulations or special orders in particular cases; he must take all practicable means to secure early information of the occurrence of cases of communicable disease; and on receiving notice, or having good reason to believe that there is, within his district, a case of disease dangerous to the public health, he must investigate the subject without delay; advise the persons competent to act as to the measures required to prevent the extension of the disease; order the prompt isolation of those sick with the disease, and the vaccination or isolation of those who have been exposed to the disease; if necessary, furnish the means for proper medical care and nursing; give public notice of all infected places by placard on the premises, and otherwise, if necessary; notify teachers or superintendents of schools concerning families in which there are contagious diseases; supervise funerals of persons who die from diseases dangerous to the public health; disinfect rooms, clothing, and all articles likely to be infected, or direct their destruction, if necessary; and finally, he must keep the local board of health and the State board of health informed respecting all cases of infectious or contagious diseases which come to his knowledge and are likely to endanger the public health.[39]

Since the health officer is an administrative officer, he has no power to legislate,[40] though under certain conditions, as where there is a single commissioner of health, he may prescribe regulations for carrying into effect the laws as promulgated by the legislative bodies. As a rule, all health regulations are made by boards, and then are to be applied and enforced by the health officer, as the executive of the board. In exercising discretion, as by determining to whom licenses should be issued under a law or regulation, a health officer is not usurping legislative or judicial powers, but is carrying on his adminis-

39. L. Parker and R. H. Worthington, *The Law of Public Health and Safety*, Albany, Bender, 1892.

40. *People* v. *Hamilton* (1919), 177 N.Y.S. 222, 188 App. Div. 783.

trative duties, and these and other executive or directory functions may be properly delegated to him.[41]

Contracts

A board of health is generally given authority to make such contracts as are necessary to the proper administration of its affairs. These contracts and agreements are usually drawn by the health officer as agent of the board or department. All such contracts should, however, be authorized or approved by the board.[42] All contracts should be made in writing, even though the law recognizes some which are verbal. An administrative officer should have records of his acts, especially in the case of agreements and contracts. Ordinary correspondence is usually sufficient for minor matters, but in any transaction in which considerable amounts of money are involved or in which important policies are implicated, there should be a formal document. Witnesses to a contract are not necessary unless required by statute, though sometimes the parties consider witnesses desirable. Health officers should not hesitate to invoke the aid of municipal attorneys or solicitors in drafting important legal papers.

A board of health may not make a special contract with the health officer for services which he is expected to render in accordance with the terms of his appointment.[43] As a general rule, the board of health may, however, properly contract with the health officer for extra duties or services not regularly within the scope of his office or employment.[44] The health officer may recover for such earned compensation.[45] The

41. See *Moy* v. *City of Chicago* (1923), 309 Ill. 242, 140 N.E. 845 (laundry regulations).

42. *Schmidt* v. *Stearns County* (1885), 34 Minn. 112, 24 N.W. 358. *Collier* v. *Scott* (1905), 124 Wis. 400, 102 N.W. 909. *Sawyer* v. *Wepello County* (1911), 152 Ia. 749, 133 N.W. 104. *Chapman* v. *Muskegon County* (1912), 169 Mich. 10, 134 N.W. 1025.

43. *Sloan* v. *Peoria* (1902), 106 Ill. App. 151. *Cochran* v. *Vermillion County* (1903), 113 Ill. App. 140. *Yandell* v. *Madison County* (1902), 81 Miss. 288, 32 So. 918. *Congdon* v. *Nashua* (1904), 72 N.H. 468, 57 A. 686. *Reynolds* v. *Mt. Vernon* (1898), 26 App. Div. 581, 50 N.Y.S. 473; affirm. (1900) in 164 N.Y. 592, 58 N.E. 1091.

44. *Dewitt* v. *Mills County* (1904), 126 Ia. 169, 101 N.W. 766. *St. Johns* v. *Clinton County* (1897), 111 Mich. 609, 70 N.W. 131. *Schmidt* v. *Stearns County* (1885), 34 Minn. 112, 24 N.W. 358. *Hudgins* v. *Carter County* (1903), 115 Ky. 133, 72 S.W. 730, 24 Ky. L. 1980. *Cedar Creek Twp.* v. *Wexford County* (1903), 135 Mich. 124, 97 N.W. 409. *Buffalo Lake Bd. of Health* v. *Renville County* (1903), 89 Minn. 402, 95 N.W. 221.

45. *Selma* v. *Mullen* (1871), 46 Ala. 411. *Plumb* v. *York County* (1914), 95 Neb. 655, 146 N.W. 938, Ann. Cas. 1915 D 1195.

health officer, as an official, may not contract with himself as an individual for any purpose, nor can a board of health contract with one of its members.[46]

Relation to Subordinates

A health officer usually has subordinates in the health department. They are subject to his authority and receive their instructions from him. The health officer is not responsible for the misfeasance or positive wrongs, or for the nonfeasance, or negligences, or omissions of duty, of the sub-agents or other persons properly employed, in the discharge of their official duties. Any powers definitely and positively entrusted to the health officer himself cannot be delegated to deputies, but he may have such deputies and assistants as may be necessary to aid in the general fulfillment of his duties. Thus, a board of health was not allowed to delegate to a committee the power of the board to employ a physician.[47] Where deputies are properly appointed, they have the powers of their principal. A deputy is, moreover, not to be confused with an assistant, for the former is one who fills the shoes of his principal, while the latter is a mere helper.[48]

Subordinates must be appointed or employed in accordance with authority, express or implied, in the statutes, and in the manner therein set forth, if any. Where a mayor and health officer employed a physician to assist them in certain yellow fever work and there was no record of any authority for such employment, the physician was unfortunately unable to recover for his services.[49]

Employees

Health department employees, or persons who are employed to render specific services for specific compensation, usually include chiefs of bureaus and divisions and practically always include physicians, public health nurses, sanitary engineers, sanitary and other inspectors, statisticians, clerks, stenographers, laborers, helpers, and all other personnel. Under some conditions, such as in cities or towns of

46. *Fort Wayne* v. *Rosenthal* (1881), 75 Ind. 156, 39 Am. R. 127. *Spearman* v. *Texarkana* (1894), 58 Ark. 348, 24 S.W. 883, 22 L.R.A. 855. *Bjelland* v. *Mankato* (1910), 112 Minn. 24, 127 N.W. 397, 140 A.S.R. 460. *Lesieur* v. *Inhabitants of Rumford* (1915), 113 Me. 317, 93 A. 838.

47. *Young* v. *Blackhawk County* (1885), 66 Ia. 460.

48. *Dillon's Municipal Corporations* (5th ed., 1911).

49. *Magee* v. *Town of Osyka* (Miss. 1908), 45 So. 836. *Pue* v. *Lewis and Clark County* (1926), 75 Mont. 207, 243 P. 573. *Sweeney* v. *Town of Peterborough* (1929), 84 N.H. 155, 147 A. 412.

certain classes, the health officer himself may under existing laws have the status of an employee instead of an officer.[50]

While the salary of a public officer, such as a health officer, attaches to the office and is not dependent upon the performance of service, the compensation or wages of employees is for actual service performed or rendered in accordance with the arrangements made.

Employees of health departments are frequently on a civil service status. Where, however, a local board of health is created by law as a separate political agency and is given the power to appoint sanitary inspectors, physicians, and other necessary agents, municipal ordinances imposing civil service requirements will not apply to employees of the board of health.[51] An employee who is under civil service can be discharged only in accordance with the terms of the law or rules that apply.[52]

Desirable qualifications for employees holding technical positions in health departments, such as bureau chiefs, public health nurses, public health engineers, and sanitarians, have been recommended by the Conference of State and Territorial Health Officers, and are given in a bulletin issued by the United States Public Health Service,[53] and in the reports of the Conference. Such qualifications have also been issued by the Committee on Professional Education of the American Public Health Association.

Termination of Office

An office may be terminated by the death of the incumbent, expiration of term, or by his resignation, suspension, removal, impeachment (in a limited class of cases), incapacity, or by abandonment. If the tenure of office is not definitely fixed, the health officer may be removed at any time by the board.[54] The removal of a health officer is not a breach of contract, as a rule.[55] The actual methods of removal

50. *Conolly* v. *Craft* (1923), 200 N.Y.S. 69, 205 App. Div. 583. *Safransky* v. *City of Helena* (1935), 98 Mont. 456, 39 P. (2d) 644. *Scofield* v. *Strain* (1943), 142 Oh. St. 290, 51 N.E. (2d) 1012.

51. *Murphy* v. *Cooper* (1929), 149 S.C. 449, 147 S.E. 438. *Board of Health of City of Canton* v. *O'Wesney* (1931), 40 Oh. App. 77, 178 N.E. 215.

52. *State ex rel. Roe* v. *Seattle* (1915), 88 Wash. 589, 153 P. 336. *Dettlinger* v. *Ocean Township* (1928), 6 N.J. Misc. 485, 141 A. 737, 101 N.J. Eq. 442. *Kohn* v. *City of Philadelphia* (1944), 156 Pa. Super. 112, 39 A. (2d) 531.

53. *The Public Health Program Under Title VI of the Social Security Act,* Supplement No. 126 to *Pub. Health Rep.,* U.S. Public Health Service, 1937.

54. *Patton* v. *Board of Health* (1899), 127 Cal. 388, 59 P. 702, 78 A.S.R. 66.

55. *Young* v. *City of Ashland* (Ky. 1910), 125 S.W. 737.

are frequently set forth in the statutes and must be complied with.[56] An office may be forfeited by misconduct, failure to perform the duties, physical or mental incapacity, or refusal to act in the official capacity. Court action, by means of the writ of quo warranto, is sometimes necessary to vacate an office. The legislature may abolish or reduce the term of an office, provided there is no constitutional limitation.[57]

The power of summary removal of an officer or employee or appointee is usually an incident to the power of appointment.[58] Such removal of officers can generally be accomplished, however, only after the officer has been accorded a hearing on charges.[59] Where, for example, a health officer resigned before the expiration of his three-year term, and another person was appointed in his place, the new appointee was held to be entitled to the office and removable only for cause, despite an attempt by the board of health to rescind his appointment and name someone else.[60] It has been held, however, that a health official who files his resignation at the time of his appointment, the resignation to be used at some future time, has acted legally.[61]

Where a state health department was given the power by law to remove a local health officer for failure or refusal to enforce necessary laws and regulations to prevent and control the spread of contagious or infectious diseases or where an emergency existed, and the charter of a city gave the mayor power to appoint and remove the health officer, it was held that the state health department could not remove the health officer merely for the reason that he did not devote full time to his duties.[62]

In a situation where a board of health of a town in Massachusetts entered into a written contract with an individual to serve as agent

56. *Attorney General* v. *Stratton* (1902), 194 Mass. 51.

57. *State ex rel. Saint* v. *Dowling* (1928), 167 La. 907, 120 So. 593. *Gouax* v. *Smith* (1926), 160 La. 617, 107 So. 466.

58. *Young* v. *Huff* (1929), 209 Ia. 874, 227 N.W. 122. *Board of Comr's of Colfax County* v. *Dept. of Public Health* (1940), 44 N. Mex. 189, 100 P. (2d) 222. *State ex rel. West* v. *Feyler* (1941), 138 Oh. St. 251, 34 N.E. (2d) 441. *Cook* v. *St. Francis County* (1943), 349 Mo. 484, 162 S.W. (2d) 252 (a nurse).

59. *Buckley* v. *Laidlaw* (1936), 14 N.J. Misc. 139, 182 A. 819. *Ware* v. *State* (1916), 111 Miss. 599, 71 So. 868. *Mississippi State Board of Health* v. *Matthews* (1917), 113 Miss. 510, 74 So. 417. *Larkey* v. *City of Bayonne* (1939), 123 N.J.L., 134, 8 A. (2d) 68.

60. *Clay* v. *Browne* (1921), 91 N.J.L. 544, 114 A. 808.

61. *Byrne* v. *St. Paul* (1917), 137 Minn. 235, 163 N.W. 162, L.R.A. 1917 F 545.

62. *State ex rel. Churchman* v. *Hall* (1920), 86 W. Va. 1, 102 S.E. 694.

for the board of health for a year, but after two months voted to dispense with his services, in strict accord with the terms of the contract, but subsequently a town meeting voted to ratify the contract and rescind the provisions regarding termination, it was held by the highest court of the State that the board of health was acting under statutory authority and that the vote of the town meeting was ineffective with regard to its actions in this matter.[63] "A municipality," said the Court, "can exercise no direction or control over one whose duties have been defined by the legislature."

The legal liability of health officers is discussed at length in Chapter XVIII.

63. *Breault* v. *Town of Auburn* (1939), 303 Mass. 424, 22 N.E. (2d) 46.