

**OPINION
51-160**

July 31, 1951 (OPINION)

STATE DEPARTMENT OF HEALTH

RE: Powers

Your letter of July 30, 1951, to the Attorney General has been received.

You desire a ruling on the legality of the State Department of Health and the State Health Council in participating or conducting surveys, studies or investigations of the state institutions that are primarily concerned with health and health problems.

You further request a ruling as to the potential scope of the activities, in other words, if there would be any restrictions or limitations placed upon the Health Council or the State Department of Health in their investigations or studies.

You also ask, "if the Health Council or the State Department of Health has legal status to make recommendations, what assurances can be offered that these recommendations will be complied with either by the Board of Administration or by the North Dakota State Hospital at Jamestown or the San Haven Sanatorium."

Answering your questions, we call your attention to Section 23-0101 N.D.R.C. which reads as follows:

STATE DEPARTMENT OF HEALTH; OFFICERS. The state department of health shall consist of a health council, a state health officer, directors of divisions and other employees of the department."

You will note that this section creates the state department of health and the health council, state health officer and directors.

We next call your attention to portions of Section 23-0103 N.D.R.C., referring especially to Subsections 3 and 4 which read as follows:

"POWERS AND DUTIES OF THE HEALTH COUNCIL.

The health council shall:

* * *

3. Establish standards, rules and regulations which are found necessary for the maintenance of public health, including sanitation and disease control;
4. Provide for the development, establishment and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, such

standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures and preservation of medical records; provided no regulation shall be made as to building construction of existing medical hospitals save in relation to safety factors;"

We next call your attention to Section 23-0104 N.D.R.C. pertaining to the effect of rules and regulations promulgated by the health council.

Based upon the above sections it is our opinion that the state department of health and the health council have full authority to promulgate rules and regulations which are found necessary for the maintenance of public health including sanitation and disease control. We hold that this is broad enough so that under the division of public health you can look into the condition of those mentally ill as well as those suffering from other diseases.

It is to be noted that Subsection 4 of section 23-0103 N.D.R.C. does not mention the state hospital at Jamestown or the sanatorium at San Haven. It contains the statement "and related medical institutions," and it must follow that the department of health and health council have authority to establish rules and regulations and enforce the same with reference to public health, sanitation and disease control in these named state institutions.

We believe that the powers of the department of health and the health council are limited as set out in Section 23-0203 N.D.R.C., but it is our opinion that those powers are broad enough to cover anything to do with health, sanitation and disease control and with respect to the treatment of those physically or mentally ill.

In regard to what assurances can be offered that these recommendations will be complied with either by the Board of Administration or by the North Dakota State Hospital at Jamestown or the San Haven Sanatorium will say that that is beyond the power of this office, but we feel sure that all state departments will within the limitations of the appropriations granted to them cooperate with you.

ELMO T. CHRISTIANSON

Attorney General