

MAINE STATE LEGISLATURE

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June 7, 1939

George W. Leadbetter, Commissioner
Department of Health and Welfare
Augusta, Maine

Dear Mr. Leadbetter:

I have examined your letter of June 2, relative to the appointment of a local health officer in the city of Lewiston, the statutes which you cite and the notice which was served upon you by the city clerk of Lewiston to the effect that the Board of Health and Welfare of that city, on May 23, 1939, voted that Robert J. Wiseman, Jr., M.D. be elected health officer for a term of three years as of the third Monday of March, 1939, subject to your approval.

In my opinion the passage of Section 6 of Chapter 84, Public Laws of 1935, which you quoted, places the election of a health officer in the hands of the municipal officers in spite of any contrary provision that may be found in the charter of any municipality. The Legislature, however, in 1939, in granting a new charter to the city of Lewiston definitely provided that the Lewiston health officer should be elected by the Board of Health and Welfare.

Our Courts have said many times that where a new legislative act covers the same subject matter as an existing statute, and the two are so plainly repugnant and inconsistent that they cannot stand together, the old statute is to be regarded as amended by the new so as to give conformity thereto.

This leads me to the conclusion that in every city, town and plantation of the State the health officer must be elected by the municipal officers except in those places where a contrary provision has been enacted subsequent to the 1935 enactment above mentioned, and that in Lewiston until the charter is again amended, or until another act

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of the Legislature is passed effecting this provision, the local health officer is elected by the Board of Health and Welfare under the provisions of the charter.

I do not believe, however, that the Board of Health and Welfare of Lewiston has any authority to give any retroactive effect to the election of a health officer, and that it is not proper for them to date Dr. Wiseman's appointment as of the third Monday of March, 1939, or of any date prior to May 23, 1939, the date of their meeting. I think you should ask them to correct their notification to you accordingly.

Very truly yours,

Franz U. Burkett
Attorney General

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