

✓ BOARD OF HEALTH--Duty of Secretary under Section 9118. 1929
Complaint by Secretary not exclusive.

9932
June 23rd, 1933 6-29



Hon. Russell T. Boyle,
Second Ass't. Prosecuting Attorney
Kansas City, Missouri.

My dear Russell:

Your letter of June 14th to General McKittrick, requesting an opinion of this Office as to the construction of Section 9118, Revised Statutes of Missouri 1929, has been referred to me for reply. Your request reads as follows:

" Complaint has been made to this office by several doctors in Jackson County, Missouri, asking that complaints be filed against several persons who are alleged to be practicing medicine in Jackson County without having obtained a license from the State Board of Health.

Under Section 9118, Revised Statutes - 1929 it is an offense to practice medicine in the State of Missouri without having obtained a license from the State Board of Health. That section also specified that the Secretary of the State Board of Health shall file complaint with the Prosecuting or Circuit Attorney in the county or state where the alleged offense occurred.

Please advise me whether or not in your opinion anyone else but the Secretary of the State Board of Health can file the complaint under the above section."

Section 9118 provides for the criminal prosecution of persons practicing medicine without proper licenses duly issued, portions of which are as follows:

"SEC. 9118. PRACTICE OF MEDICINE AND TREATMENT OF SICK, ETC., WITHOUT LICENSE PROHIBITED--PENALTY.-- Any person practicing medicine or surgery in this state, and any person attempting to treat the sick or other afflicted with bodily or mental infirmities and any person representing or advertising himself

by any means or through any medium whatsoever or in any manner whatsoever, so as to indicate that he is authorized to or does practice medicine or surgery in this state, or that he is authorized to or does treat the sick or others afflicted with bodily or mental infirmities, without a license from the state board of health, as provided in this article, or after the revocation of such license by the state board of health, as provided in this article, shall be deemed guilty of a misdemeanor, * * *. Upon receiving information that any provision of this section has been or is being violated the secretary of the state board of health shall investigate the matter and upon probable cause appearing, shall, under the direction of the board, file a complaint with the prosecuting or circuit attorney in the county or city where the alleged offense occurred. Any person filing or attempting to file as his own, a license of another or a forged affidavit of identification, shall be guilty of a felony and upon conviction thereof, shall be subjected to such fine and imprisonment as are made and provided by the statutes of this state for the crime of forgery in the second degree: * * *"

It is to be noticed that aside from the portion underlined, the Section undertakes to define criminal offenses and by examining the history of this Section, we find that this portion above underlined was ingrafted upon this statute by an amendment passed in 1927. The principal object of this amendment was to place upon the secretary of the board of health, the mandatory duty of investigating any violation of the Section, then if satisfied that this Section is being violated, the secretary of order of the board shall "file a complaint with the prosecuting or circuit attorney". This Section does not authorize the secretary of the board to file a complaint before a Justice of the Peace or before any other officer which complaint would be the basis for a criminal prosecution. It, in fact, permits the secretary when duly authorized by the board to present such facts, information and evidence as he may have at hand to the prosecuting attorney, upon which the prosecuting attorney may act if in his judgment action is advisable.

The definition of "complaint" as set out in Bouvier's Law Dictionary, seems applicable.

"Complaint. In criminal law. The allegation made to a proper officer that some person, whether known or unknown, has been guilty of a designated

offense, with an offer to prove the fact, and a request that the offender may be punished."

This Section in no way limits or restricts the powers or duties of the prosecuting attorney to act in such cases. It doesn't require the prosecuting attorney to act upon such complaint.

We find a somewhat similarly worded statute in Section 4522 R. S. Mo. 1929, which reads as follows:

"Sheriffs * * * and all other police or enforcement officers are hereby authorized and directed to apprehend and arrest any person or persons found violating any of the provisions of this chapter, which are herein described, and to immediately file the necessary complaint for such violation before the prosecuting attorney of the county in which such violation of the law occurs."

Because the foregoing Section requires the law enforcement officers to lay such information as they may have at hand before the prosecuting attorney of the county in which the violation has occurred, does it seem possible that any other person, any citizen, would be precluded from taking up with the prosecuting attorney, matter of the violation of any of the provisions of Chapter 31, R. S. Mo. 1929? We think not, the reason being found in the case of City of Richmond v. Mull, reported in 174 Mo. App. 176. In this case, defendant had been convicted upon a complaint sworn to by private citizens. The complaint was made under Section 9932, R. S. of 1909 which read as follows:

"The complaint, when made by the marshall or any policeman against any person arrested without process and in custody, shall be reduced to writing and sworn to by such officer before such person shall be put upon his trial."

No other statutory enactment touching cities of the fourth class, the class in which the City of Richmond was at that time, made any provision for the filing of any complaint by a private citizen either orally or in writing, and the defendant took the position

that the affidavit of a private citizen was insufficient to begin and maintain a suit on behalf of the City. The Court in upholding the validity of this affidavit stated as follows at p. 182:

"If a private individual knows of a violation of a city ordinance we can think of no harm that can be done if he be permitted by complaint to submit to the proper officials a basis for a prosecution. The city's interests can be protected by the proper officials. The complaining party has no such control over the prosecution as will enable him to assume complete and exclusive control of the case. The purpose and definition of the term "complaint" is not so extensive. On the other hand if this construction were not adopted opportunities might be more readily offered for impositions on the city and its inhabitants. If the action of some officer who might be absent or dilatory could not be obtained offenders would be given an opportunity to escape if a warrant could not be procured on the complaint of a private citizen."

And the Court further remarked on p. 183 as follows:

"* * *in the case at bar we do meet the point urged and hold that a warrant and a prosecution for the violation of an ordinance of a city of the fourth class may be based on a complaint of a private person. To so hold is no more reading into the statute than is contemplated in the construction contended for by defendant that a city official is the only person upon whose complaint a warrant and prosecution may be based. By our construction no right claimed for the city is violated and greater latitude is given for the enforcement of the ordinances of the city 'enacted for the better promotion of peace and good order within its limits.' "

For the reasons herein stated it is therefore the opinion of this Office that the portion of Section 9218 R. S. of Mo. 1929 referring to the secretary of the board of health, does no more

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than prescribe the duties of the secretary in respect to violations of that Section of the statutes and in no way limits or restricts the rights of any person to prefer a charge or complaint to the prosecuting attorney against any violator of said Section.

Respectfully submitted,

HARRY G. WALTNER, Jr.,
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

HGW/mh