

DIVISION OF HEALTH: Political subdivisions may continue to participate financially with the Division of Health for health services in their political subdivision.

July 2, 1946



Dr. R. M. James, Director
Division of Health
Jefferson City, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter requesting an opinion of this department, which reads as follows:

"For many years this Department has cooperated with cities and counties in the maintenance of local health services.

"It is now called to our attention that one city in the State has withdrawn its financial assistance which consisted of payment of rent, etc. to the local district health office because they were not permitted to make such payments under the new Constitution.

"We would like an opinion from your office on the following question: Does Section 23, Article 6 of the new Constitution prohibit any city, county or other political sub-division in the State from participating financially with this Department in the operation and maintenance of health services? Such payment would include salaries, rent, travel or other expenses."

Section 23, of Art. VI of the Constitution of 1945, provides:

"No county, city or other political corporation or subdivision of the state shall own

or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

The above section was taken from Section 47, Art. IV and Section 6, Art. IX, Constitution of 1875. These sections have never been construed in the courts of this state as they apply to a political subdivision participating with the division of health in the operation and maintenance of health services.

Section 47 of Art. IV, Constitution of 1875, provides in part:

"The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company: * * * * *"

Section 6, Art. IX, Constitution of 1875, provides in part:

"No county, township, city or other municipality shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation or donation, or loan its credit to or in aid of any such corporation or association, or to or in aid of any college or institution of learning or other institution, whether created for or to be controlled by the State or others. * * * * *"

In the case of Jasper County Farm Bureau v. Jasper County, 315 Mo. 560, the county court appropriated money to the Jasper County Farm Bureau, a voluntary association. It was contended that this appropriation violated the above sections of the Constitution of 1875. The court held that this does not constitute a gift or grant of money to a private association and, in so holding, stated at l. c. 565:

"There are also many purposes for which public money may be appropriated from the use of which some persons derive more benefit than others, but this circumstance does not detract from the fact that their chief function is to administer to the public good, although the enjoyment and advantages derived from their maintenance are not distributed equally, even between members of the public who are situated alike or in the same class. If it were essential to the establishment or existence of an enterprise to be set up and sustained by public aid that all members of the public or all members of any class should derive from it the same or like benefits or advantages, then it would be entirely impossible to describe a public enterprise in aid of which public funds might be set apart."

There is no doubt that the appropriation of money for the protection of public health is an appropriation for public purposes. The general rule is stated in 39 C.J.S. Sec. 2, p. 811:

"It is a well recognized principle that the protection of the public health is one of the first duties of government. * * * * *"

Further, in Central States Life Ins. Co. v. State, 80 S.W. (2d) 628, the Supreme Court of Arkansas stated at l. c. 629:

"* * * One of the highest duties a government owes its citizens is to protect their

health, from which it follows that money raised and expended for the promotion of the public health is a necessary expense of any well-regulated government. * * * * *

The participation of a political subdivision or city with the Division of Health in providing health services for its citizens is merely an attempt to provide the best service possible and to perform their long recognized duty. This is not a grant or loan in aid of a corporation, association or individual, but rather it is a cooperative venture with a state agency, and the outlay of money is for a well known public purpose.

This type of limitation on the powers of a political subdivision can also be found in the Constitution of 1865. At that time the railroads were expanding at a rapid rate throughout the middle west. Many of these railroad ventures were no more than wildcat schemes for the purpose of promoting stock sales. After many of our counties and cities had participated in these ventures, it was learned that they had contracted debts that were to live with them for many years. In order to stop the officials of a political subdivision from using public money for other than public purposes, these sections were added to our Constitution of 1875. Therefore it can readily be seen that the purpose of this type of constitutional provision was to keep political subdivisions from giving direct aid to a private corporation and not to prevent them from cooperating with state agencies in expending money for public purposes.

CONCLUSION

Therefore, it is the opinion of this department that Section 23 of Art. VI of the Constitution of 1945 does not prohibit a political subdivision or city from participating financially with the division of health in the operation and mainte-

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nance of health services for the citizens of the subdivision.

Respectfully submitted,

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PW:CP