

HEALTH & WELFARE:
NARCOTIC DRUG LICENSE:

Applications for a license to sell narcotic drugs are permanent records and cannot be destroyed. Such applications may be micro-filmed, that fact certified to the Governor, who may order the original records destroyed.

August 16, 1949

Dr. C. F. Adams
Acting Director
Division of Health
Jefferson City, Missouri



Dear Dr. Adams:

This department is in receipt of your recent request for an official opinion in regard to the following:

"1. In regard to the Narcotic Drug Act which is covered in Sections 9832 to Sections 9854:

"(a) We have kept in the files of this Division all the original applications for Narcotic Licenses, which are issued annually, and now have on hand these applications for the past eleven years. Will we be within our legal rights if we destroy the old application blanks and keep only those applications which are three years old, or less? If it is not permissible to destroy these old records, then will it be permissible to microfilm the old application records and destroy the original application?"

In the above you ask two questions, the first of which is:

"Will we be within our legal rights if we destroy the old application blanks and keep only those applications which are three years old, or less?"

In regard to the above we would direct your attention to Section 9834, Mo. R.S.A. 1939, which section states:

"No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a

wholesaler shall supply the same, without having first obtained a license so to do from the State Board of Health." (Now the Division of Health.)

We would also direct your attention to that portion of Section 9835, Mo. R. S. A. 1939, which states:

"No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the State Board of Health." (Now the Division of Health.)

From the above it is made clear that a license to sell narcotic drugs must be obtained by the dealer by his making application therefor to the State Board of Health (now the Division of Health) which, if the applicant meets the requirements set forth in Section 9835, supra, (which requirements are not quoted by us) shall be issued by the State Board of Health (now the Division of Health).

We would call your further attention to Section 9761 which states:

"The secretary of the state board of health shall have supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board, and shall act as state registrar of vital statistics. As secretary he shall receive an annual salary at the rate of twenty-four hundred dollars, payable monthly. The state board of health shall provide for such clerical and other assistance as may be necessary for the purpose of this article, who shall serve during the pleasure of the board, and may fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. Suitable apartments shall be provided by the custodian of the capitol for the bureau of vital statistics and the state board of health (now the Division of Health), in the state capitol at Jefferson City, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under

this article." (Insertion ours.)

It will be observed that the foregoing section states that:

"* * *Suitable apartments shall be provided by the custodian of the capitol for the bureau of vital statistics and the state board of health in the state capitol at Jefferson City, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this article."

We would call your further attention to Section 9744 Mo. R.S.A. 1939, which section states:

"The Governor, by and with the advice and consent of the Senate, shall appoint a Commissioner of Health, who shall hold his office for a term of four years, and who shall be a physician in good standing and of recognized professional and scientific knowledge and a graduate of a reputable medical school, and shall have been a resident of the State for at least five years next preceding his appointment, and in making such appointment there shall be no discrimination made against the different systems of medicine that are recognized as reputable by the laws of this State. The Commissioner of Health shall be subject to removal from office for cause by the Governor at his pleasure. The compensation of the Commissioner of Health shall be five thousand dollars (\$5000) per annum. He shall also receive traveling and other expenses necessarily incurred in the performance of his duties. The Commissioner of Health as hereby constituted shall assume all the rights, powers, privileges and duties heretofore conferred by law upon the Secretary of State Board of Health (now Division of Health) heretofore authorized by law, which office is hereby abolished. Where any law refers to the Secretary of the State Board of Health (now Division of Health) as heretofore constituted, same shall, after the passage of

this law, be construed as referring to and meaning the Commissioner of Health as hereby and herein constituted." (Insertion ours).

It will be observed that the foregoing section places in a Commissioner of Health all of the rights, powers, privileges and duties heretofore conferred by law upon the secretary of the State Board of Health which is referred to in Section 9761, supra, quoted above, and that the office of secretary is abolished.

Section 13, page 949, Laws Mo. 1945, states:

"All powers and duties heretofore under administration and control of the state board of health, except the examination and licensing of persons, shall henceforth be under administration and control of the department of public health and welfare and shall be assigned to the division of health within the department, together with all other powers and duties which may herein or hereafter be assigned. In all laws of Missouri, and orders and findings issued thereunder, wherever the term state board of health is used, the term division of health shall hereafter be substituted and understood. The division of health shall also have control and administration over the Missouri state sanatorium at Mt. Vernon in the same manner and to the same extent as has heretofore been lawfully exercised by the board of managers of the state eleemosynary institutions under Article I, Chapter 51, Revised Statutes of Missouri, 1939, with amendments thereto. The division of health shall also have such jurisdiction over the accounts of city and county tuberculosis hospitals as has been heretofore been lawfully exercised by the board of managers of the state eleemosynary institutions. The cancer commission of the State of Missouri, as established by Chapter 125, Revised Statutes of Missouri, 1939, as amended, is hereby assigned to the division of health in the department of public health and welfare." (Underscoring ours.)

The above sections abolishes the State Board of Health, the Board of Managers of state eleemosynary institutions and the State Social Security Commission and establishes a department of Public Health and Welfare composed of three divisions of which the Division of Health is one. The creating act states that "All powers and duties heretofore under administration and control of the State Board of Health, except the examining and licensing of persons, shall henceforth be under administration and control of the department of Public Health and Welfare and shall be assigned to the Division of Health within the department together with all other powers and duties which may herein or hereafter be assigned.* * * *"

Thus we see that by these successive acts quoted above the State Board of Health has become the Division of Health, but that it has in these successive processes carried with it the powers and duties set forth in Section 9761, supra, one of which duties is:

"* * * Suitable apartments shall be provided by the custodian of the capitol for the bureau of vital statistics and the state board of health*in the state capitol at Jefferson City, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this article." *(Now Division of Health.)

It will be seen therefore that there is imposed upon the present Division of Health the duty to permanently preserve all official records of that department.

The next question which we have to decide is whether these applications for narcotic licenses are "official records." If they are, then, according to the foregoing, they are permanent records and cannot be destroyed. If they are not official records then the reverse is true. In seeking guidance upon the above we would call your attention to the case of Cohn v. U. S., 258 Fed. 355, which upon this point says:

"Official means of or pertaining to an office or public trust; derived from the proper office or officer or from the proper authority."

Certainly these applications for a narcotic drug license are "of or pertaining to" the office of the Division of Health.

Against, the laws of Missouri consider that a record which could be offered as evidence in a trial is a "documentary record." Bailey v. Metropolitan Life Ins. Co., 115 S.W.(2d) 151. Certainly there could be no doubt that these applications for narcotic licenses could be offered as evidence in a trial, and from this fact we draw, by analogy, the conclusion that these applications are "documentary records."

We would call your further attention to the case of State ex rel. Kavanaugh v. Henderson, 169 S.W.(2d) 389, which states:

"In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it. 53 Corpus Juris, Section 1, Pages 604 and 605; Clement v. Graham, 78 Vt. 290, 63 A. 146. Ann Cas. 1913E, 1208; Robison v. Fishback, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179, Ann. Cas. 1913B, 1271; State Ex rel. Eggers v. Brown, 345 Mo. 430, 134 S.W.(2d) 28.

This, it seems to us, is the nearest indication as to whether these applications are official records. There is no written regulation requiring these applications to be filed in the office of the Division of Health. However, that is one of the unwritten customs and regulations of the Division of Health since its inception and was one of the State Board of Health's throughout its whole existence. Without the filing of these applications it would be manifestly impossible to properly transact this portion of the business of the Division of Health. The application itself states; "the undersigned, hereby makes application for a license to engage in the business of manufacturing, wholesaling, retailing and/or dispensing of narcotics in accordance with the laws of Missouri, Art. VI, Chapter 57, R. S. Mo. 1939. The license itself states:

"The party named on the front of the license has formally complied with the provisions of the Narcotic Act, Chapter 57, Article 6, R. S. 1939, and acts amendatory thereto, in making application for this permit. Licensee is hereby permitted to deal in narcotics subject to the conditions prescribed by law. This license

is not transferable on change of ownership of business, nor may narcotics be dealt in at any place of business other than the place described on face. This license is subject to revocation upon failure to comply with any of the rules and regulations prescribed by the Statutes or by the Division of Health or failure to comply with the Federal Narcotic Act."

From the above it would seem plain that the filing of these applications is required in the public office of the Division of Health and that, according to the Kavanaugh case, makes it a "public record." It is obvious that a "public record" is an "official record," and so we reach the conclusion that these applications for a license to sell narcotic drugs are official records and, according to Section 9761, which is still applicable, are permanent records and cannot be destroyed.

Your second question is:

"If it is not permissible to destroy these old records, then will it be permissible to microfilm the old application records and destroy the original application?"

In regard to the above, we would call your attention Sections 1, 2 and 4, found in pages 1427-1428, Laws of Missouri, 1945, which state:

"Section 1. Records may be photographed, microphotographed, photostated, or reproduced on film.--The head of any business or the head of any state, county or municipal department, commission, bureau or board may cause any or all records kept by such official, department, commission, bureau, board or business to be photographed, microphotographed, photostated or reproduced on film. Such film or reproducing material shall be of durable material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details.

"Section 2. Such copy to be considered an original record.--Such photostatic copy, photograph, microphotograph or

photographic film of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof, shall, for all purposes recite herein, be deemed to be a transcript, exemplification or certified copy of the original.

"Section 4. Disposal or destruction of such records or papers.--Whenever such photostatic copies, photographs, microphotographs or reproductions on films shall be placed in conveniently accessible files and provisions made for preserving, examining and using same, the said head of a state department, commission, bureau or board, county office or department, city office or department may certify those facts to the Governor, or to the county court or to the mayor of a municipality, respectively, according to their status as subdivisions of government, who shall have the power to authorize the disposal, archival storage or destruction of such records or papers."

From the above it is clear that all public records (including those of the Division of Health) may be microfilmed, and that records so microfilmed are to be considered as being original records. Following the microfilming of such records the head of a department may certify such fact to the Governor, who, by the authority vested in him by Section 4, above quoted, may authorize the destruction of the original records which have been microfilmed.

CONCLUSION

It is the conclusion of this department that applications for a license to sell narcotic drugs are permanent records and cannot be destroyed.

It is the further conclusion of this department that such applications may be microfilmed, and that fact certified to the Governor, who may order the original records destroyed.

APPROVED:

Respectfully submitted,

J. E. TAYLOR
Attorney General

HUGH P. WILLIAMSON
Assistant Attorney General