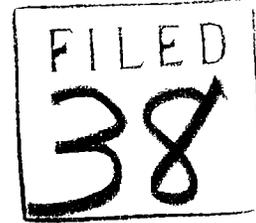


DIVISION OF HEALTH: The Division of Health may require the Code of
PLUMBING CODE: Regulations prepared by the Board of Plumbing
and Sewer Inspection of St. Louis County to
provide regulations that will protect the
public health and safety.

FILED 38

February 10, 1950



Division of Health
Bureau of Public Health Engineering
Jefferson City, Missouri

Gentlemen:

I.

In response to your request for an official opinion from
this department on the following questions:

"1. Does the County Court of St. Louis County
have legal authority to place the Department
of Plumbing and Sewer Inspection in the St.
Louis County Health Department with the plumbing
supervisor administratively responsible to and
performing his functions under direction of the
St. Louis County Health Commissioner?

"2. In view of the statute creating a Department
of Plumbing and Sewer Inspection, does the
Division of Health have the authority to require
the insertion of the following provision in the
code?

"In conformity with the provisions of the
Uniform Plumbing Code of Missouri, Laws
1943, Section 10 on Page 836, and in order
that any water supply, water treatment,
water distribution system, sewage collection
system, sewage treatment system, and all
connections and appurtenances thereto,
whether public, semi-public, or private,
shall be constructed in accord with established
principles of sanitary engineering and public
health, all required plans and specifications
for construction of, alteration of, or addition
to such works shall be submitted to and
approved in writing by the Division of Health
of Missouri prior to the issuance of a permit
by the Department of Plumbing and Sewer

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Inspection.

"3. In view of the authority given the Board of Plumbing and Sewer Inspection and the Department of Plumbing and Sewer Inspection under the statutes relating to the uniform plumbing code, is the Division of Health relieved of any responsibility established by the general health statutes and the attached Division of Health Regulations pertaining to the installation, extension, and operation of public water supplies and public sewerage systems?"

we herewith submit the following discussion and conclusion of this department.

II.

In regard to the first question we find that the county court of St. Louis county, as a class 1 county has been given the power and permitted by the Legislature of the state of Missouri, to make and promulgate such rules, regulations or ordinances as will tend to enhance the public health according to the provisions of Section 9748a, Mo. R.S.A., Laws 1945, page 974, Section 1.

Therefore, would placing the Department of Plumbing and Sewer Inspection in the St. Louis County Health Department and under the direction of the deputy state health commissioner of St. Louis county enhance the public health?

The Uniform Plumbing Code of Missouri was enacted by the Legislature in 1943 for the purpose of protecting health, safety and the general welfare of the people in the counties affected by said act. It is the duty of the Deputy State Commissioner of Health and St. Louis county to enforce the rules and regulations of the Division of Health of Missouri throughout said county, outside of incorporated cities in said county which have a Deputy State Commissioner of Health according to the provisions of Section 9747, R.S.Mo. 1939.

Section 14, of Laws of Missouri, 1945, page 949, provides in part as follows:

"It shall be the general duty and responsibility of the Division of Health to safeguard the Health of the people in the State and all its subdivisions.
* * * * *

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The courts of this state have consistently held that it is the duty and responsibility of the State Board of Health, now the Division of Health of the State of Missouri, to protect the public health of the people of the state.

The Supreme Court of Missouri held in the case of Lancaster v. County of Atchison, 180 S.W. (2d) 706, l.c. 708:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' Sturgeon v. Hampton, 88 Mo. 203, loc. cit. 213. Quoted with approval in the case of Morris et al. v. Karr et al., 342 Mo. 179, 114 S.W. (2d) 962, loc.cit. 964.

"Both parties to this suit agree that counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation --not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' Dillon on Municipal Corporations, 3rd Ed., Section 89. We have repeatedly approved this quotation. See State ex rel. City of Blue Springs v. McWilliams et al., 335 Mo. 816, 74 S.W. (2d) 363; State ex rel. City of Hannibal v. Smith, State Auditor, 335 Mo. 825, 74 S.W. (2d) 367, 372."

We believe that the county court of St. Louis county has no legal authority to place the Department of Plumbing and Sewer Inspection in the St. Louis County Health Department with the plumbing supervisor subject to the general direction of the Deputy State Commissioner of Health for St. Louis county. We reach this conclusion because the Legislature created a "Department of Plumbing and Sewer Inspection" by the Uniform Plumbing Code, and because the Legislature specified in that Act that the county health commissioner would serve as an ex officio member of the

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Board of Plumbing and Sewer Inspection. We believe that the power to place the Department of Plumbing and Sewer Inspection under the jurisdiction or supervision of the St. Louis County Health Department cannot be necessarily or fairly implied from the powers granted the county court of St. Louis county to make and promulgate rules and regulations that would tend to enhance the public health of that county.

In regard to your second question we have studied Section 11 of the Uniform Plumbing Code, Laws Mo. 1943, page 831, which is as follows:

"For the purpose of promoting health, safety and the general welfare and to carry into effect the purposes and provisions of this act, the county court is hereby empowered to adopt by order rules and regulations for the installations and inspection of all public or private water or plumbing facilities and appurtenances and all installations relating thereto, sewers, sewer systems, water or sewer connections, septic tank or sewage settling tank or device, and all installations related thereto. The regulations shall contain a schedule of fees to be charged for inspections which are required to be made under the provisions of this act. It shall be the duty of the Board of Plumbing and Sewer Inspection to prepare a Code of Regulations approved by the State Board of Health which shall be submitted to the county court for adoption. Before the adoption of such Code of Regulations, the Board shall hold at least one (1) public hearing thereon, fifteen (15) days notice of the time and place of which shall be published in at least one (1) newspaper having general circulation within the county and notice of such hearing shall also be posted at least fifteen (15) days in advance thereof in four (4) conspicuous places in the county."

This section requires that the Code of Regulations prepared by the Board of Plumbing and Sewer Inspection shall be approved by the State Board of Health, now Division of Health of Missouri. Since the Code must be submitted to your Division for approval before the adoption by the county court of St. Louis county, you may require the insertion of any reasonable provisions that will protect and safeguard the public health of the people of this state. Your second question refers to Section 10 of said Act, but we believe that you refer to Section 11 instead of Section 10 for your authority to require certain provisions in the Code that were supposed to be prepared after the Uniform Plumbing Code became

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law. It should not be necessary for the persons building a water supply system or sewer or sewage systems to submit their plans and specifications to two different agencies, but, after the Department of Plumbing and Sewer Inspection had approved the plans and specifications submitted to them, they could very easily refer the same plans and specifications to the Division of Health of Missouri for approval or rejection. The county court of St. Louis county has the power to require that the Code submitted to them for adoption, shall contain provisions that will tend to enhance the public health and to prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county according to Section 9748a, Laws Mo. 1945, page 974, which reads, in part, as follows:

"The county courts of the several counties of class one are hereby empowered and permitted to make and promulgate such rules, regulations or ordinances as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county; provided such rules, regulations and ordinances shall not be in conflict with any rules or regulations authorized and made by the state board of health in accordance with this chapter.* * *"

In regard to your third question, we believe that the Division of Health of the State of Missouri cannot be relieved of any responsibility established by the general health statutes to protect and safeguard the health of the people of the state and all of its political subdivisions. The Supreme Court of Missouri said in the case of Riggs v. City of Springfield, 126 S.W. (2d) 1144, 1.c. 1153:

"* * *Furthermore, the State Board of Health, under Section 9015 R.S.Mo. 1929, Mo. St. Ann. Sec. 9015, p. 4178, has imposed upon it the duty 'to safeguard the health of the people in the state, counties, cities, villages and towns.' * * *"

The Supreme Court again said in the case of Hughes v. State Board of Health, 159 S.W. (2d) 277, 1.c. 279:

"* * *it is a wholesome and well-recognized rule of law that powers conferred upon boards of Health to enable them effectually to perform their important functions in safeguarding the public health should receive a

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liberal construction. * * * *"

The Supreme Court of Montana in the case of Miles City vs. Board of Health, 102 P. 696, l.c. 698, said:

"Furthermore, the right which the state is attempting to assert through the agency of the State Board of Health is a public right-- a right to protect the health of the people of the state * * * * It is now generally conceded that the police power is such a power, inherent in the state for the protection of the public, that the state may not waive or divest itself of the power to exercise it.
* * * "

Since 1883 it has been the duty of the State Board of Health, now the Division of Health of Missouri to safeguard the health of the people of this state, and all the statutes that have been enacted since that time clearly provide that it is the continuous responsibility and duty of this department of the state of Missouri to protect the health of the people of the state and this responsibility cannot be shifted to any county or municipality in this state.

CONCLUSION

It is the opinion of this department that:

(1). The county court of St. Louis County may not place the Department of Plumbing and Sewer Inspection in the St. Louis County Health Department under the general direction of the Deputy State Health Commissioner of St. Louis county.

(2). The Division of Health has authority to require the insertion of specific provisions relating to the protection of the public health in the Code of Regulations to be prepared by the Board of Plumbing and Sewer Inspection of St. Louis county. The following provisions could be required:

"In conformity with the provisions of the Uniform Plumbing Code of Missouri, Laws 1943, Section 10 on Page 836, and in order that any water supply, water treatment, water distribution system, sewage collection system, sewage treatment system, and all connections and appurtenances thereto, whether public, semi-public, or private, shall be constructed in accord with established principles of sanitary engineering and public

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health, all required plans and specifications for construction of, alteration of, or additions to such works shall be submitted to and approved in writing by the Division of Health of Missouri prior to the issuance of a permit by the Department of Plumbing and Sewer Inspection."

(3). The Division of Health was not relieved of any responsibility established by law to protect the public health of the people of this state by the enactment of the Uniform Plumbing Code of 1943.

Respectfully submitted,

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APPROVED:

J.E. TAYLOR
Attorney General

SJM:mw