

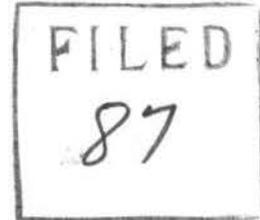
COUNTY HEALTH CENTERS:
COUNTY COURT:
COUNTIES:
HEALTH:
RABIES:
ANIMALS:

The board of trustees of the county health center in a county of class two which adjoins a county of the first class having a charter form of government cannot authorize the expenditure of county health center funds for rabies control.

OPINION NO. 87

February 16, 1973

Honorable Robert J. Curran
Prosecuting Attorney
Jefferson County
Post Office Box 246
Hillsboro, Missouri 63050



Dear Mr. Curran:

This official opinion is issued in response to your request for a ruling on the following question:

"Can the Board of Trustees of a County Health Department authorize spending Health Department funds for Rabies Control?"

Your request stated that this question arose between county health officials and the county court before the approving of the county budget. We note that Jefferson County is a county of class two which adjoins a county of the first class having a charter form of government.

Although your request for this opinion refers to the "County Health Department" there is no statutory authority for such a department in a county of class two. It is assumed that this title is a misnomer, and that you are in fact referring to the board of trustees of the county health center. We are writing this opinion on the basis of that assumption and will refer to the "board of trustees of the county health center" rather than to the "county health department". Since there is no statutory authority for a "county health department", such a department could, of course, have no powers or duties in this matter.

Section 322.120, RSMo 1969, provides, in pertinent part, that:

"The provisions of sections 322.090 to 322.130 shall be applicable to all . . . counties of

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class two which adjoin a county of the first class having a charter form of government."

Section 322.090, RSMo 1969, provides as follows:

"For the purpose of promoting the public health and safety and to prevent the transmission of rabies and to control rabies and to carry into effect the purposes and provisions of sections 322.090 to 322.130, the county court is hereby empowered to adopt by order, rules and regulations which shall include provisions for licensing, catching, impounding, confinement, redemption and isolation and destruction of dogs; impounding, isolation and destruction of other domestic animals exposed to or infected with rabies; reporting of animals affected with, or suspected of having rabies, or suspected of having been exposed to rabies, or known or suspected of having bitten or attacked a person; confinement, impounding and destruction of dogs displaying vicious propensities; declaration of a quarantine and terms of the quarantine for any portion of such county affected by a rabies epidemic, pursuant to the recommendation of the county health commission; the establishment of a schedule of fees and the method for the collection thereof from the licensing, redemption, isolation or confinement and destruction of dogs and other special services for the control of rabies. The county court shall establish, maintain and operate a county dog pound and shall provide the necessary personnel and facilities to operate the same and shall provide appropriate motor conveyances for the capture of stray or rabid dogs and provide all the facilities necessary to carry into effect the regulations adopted under the provisions of sections 322.090 to 322.130 and shall be authorized to expend county funds for the purposes aforesaid; and shall have authority to contract with any city, town or village within any such county for any of the services, facilities or functions created and established under sections 322.090 to 322.130." (Emphasis added)

The statute speaks only of the county court. No authority is given in Sections 322.090 to 322.130 to the board of trustees of

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the county health center to authorize the expenditure of funds for the purposes set out in Section 322.090, RSMo 1969. That section assigns to the county court the responsibility to provide for rabies control in a comprehensive manner, without requiring the participation of the board of trustees of the county health center or of any other county officials not mentioned in the statute.

We therefore conclude that the legislature's explicit delegation of power to authorize the expenditure of county funds for purposes of rabies control runs exclusively to the county court, and that therefore the board of trustees of the county health center may not authorize the expenditure of county health center funds for rabies control.

Nor do we find sufficient authorization for rabies control expenditures by a county health center in Sections 205.010 through 205.155, RSMo 1969, which define the powers and duties of such centers and their trustees. In this regard, we refer you to our Opinion No. 93, October 22, 1952, addressed to the Honorable Wayne W. Waldo. A copy of that opinion is attached hereto. We held there that a county health center has no express or implied power to purchase a site for a county garbage dump, because the duty to provide such a service had been delegated to other local (municipal) authorities. The logic of that opinion applies equally to the instant situation.

In our Opinion No. 415, December 21, 1971, addressed to the Honorable Peter H. Rea (copy of which is attached hereto), we held that the trustees of a county health center would be authorized to appoint personnel on a full or part-time basis to investigate and enforce violations of environmental laws and regulations. But, in that context, there was no explicit statutory provision in Chapter 204, RSMo 1969, or elsewhere, for local investigations of environmental law violations. For that reason, the trustees' implied power under Section 205.042.5, RSMo 1969, to "carry out the spirit and intent of sections 205.010 to 205.155 pertaining to establishing and maintaining a county health center", by expending funds for the payment of such investigative personnel "for the improvement of health of all inhabitants of said county" (Section 205.050, RSMo 1969), was not pre-empted by any alternative delegation of power. But such is not the case with respect to county programs for rabies control.

It has frequently been stated that 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

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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." Lancaster v. County of Atchison, 180 S.W.2d 706, 708 (Mo. banc 1944).

CONCLUSION

Therefore, it is the opinion of this office that the board of trustees of the county health center in a county of class two which adjoins a county of the first class having a charter form of government cannot authorize the expenditure of county health center funds for rabies control.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 93
10/22/52, Waldo

Op. No. 415
12/21/71, Rea