

STATE BOARD OF HEALTH: County Court required to appoint County Health Nurse upon filing of sufficient petition, Section 9039 R. S. Mo. 1929.

COUNTY COURT;

5-15  
May 14, 1935.



State Board of Health  
Jefferson City, Missouri

Attention of Doctor E. T. McGaugh.

Dear Doctor McGaugh:

Acknowledgment is herewith made of your request for an opinion of this Department on the following matter:

"Will you kindly render an opinion in the following matter:

1 - Under the provisions of section 9039 of the Revised Statutes, is it mandatory that a Missouri county court, upon the presentation of a petition signed by two hundred and fifty taxpayers, to provide for the employment of a public health nurse to serve the citizens of the county in the control of communicable diseases and the promotion of the health of the community; and

2 - In case the county court fails or refuses to immediately consider such petition, do the citizens of the county represented by the two hundred and fifty petitioners, have any recourse; and

3 - Under the provisions of section 9039 or any other applicable sections, is the county court empowered to cooperate with the state and federal health agencies and local committees such as tuberculosis associations and chapters of the American Red Cross, in providing communicable disease prevention and health promotion activities in the county."

## I.

SECTION 9039 R. S. Mo.  
1929, IS MANDATORY.

Public Health Nurses were first authorized to be employed by the provisions of Senate Bill 575, page 299, Laws of Missouri, 1915. Section 4 of that act provided:

"In case a petition is signed by 250 taxpayers and presented to any city council of the second, third or fourth class or any county court, asking for the appointment of a trained nurse or nurses, or that any place infected with tuberculosis be disinfected, as designated in section one of this act, it shall be the duty of said city council or county court, as the case may be, to provide for the appointment of said nurse or nurses and for the disinfecting of any infected place, and to pay for the same as provided in section three hereof."

This section became Section 5795 of the Revised Statutes of 1919, and was amended in 1925, page 253, Laws of 1925, so as to read as it is now constituted and denominated Section 9039 R.S. of 1929. This Section is as follows:

"In case a petition is signed by two hundred and fifty taxpayers and presented to any city council of the second, third or fourth class or any county court, asking for the appointment of a public health nurse or nurses or that any place infected with infectious or contagious disease be disinfected, as designated in Section 9035, it shall be the duty of said city council or county court, as the case may be, to provide for the appointment of said nurse or nurses and for the disinfecting of any infected place and to pay for the same as provided for in Section 9038 hereof."

It should be noted that in the above Section it is provided that upon the filing of the required petition " \* \* it shall be the duty of said county court, \* \* to provide for the appointment of said nurse or nurses." This provision is quite different from the provision of Section 9036 which authorizes and directs the State Board of Health to make formal report to any County Court and recommend a course of action to prevent the spread of infectious or contagious diseases. This section provides:

"Said county court at its next meeting \* \* shall consider said report and recommendation, and act upon it \* \* and such county court shall \* \* be authorized to employ \* \* a public health nurse \* \* "

Under the provisions of this section it is apparent that the Legislature intended that the County Courts should exercise their discretion in employing a public health nurse in the event the matter was called to their attention by the Board of Health. However, far different terms have been used in the provisions of Section 9039, and it appears that by the provisions of this latter section, it was the legislative intent to require the County Court to act promptly upon the filing of the petition without any independent inquiry as to the need or advisability of the employment of such public health nurse.

It is the general rule that the word "shall" is mandatory rather than directory. As stated in the case of State ex rel. Stevens vs. Wurdeman, 246 S. W. 189, 194:

"The statute says the defendant 'shall be entitled to be discharged' save in the two excepted situations, supra. Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute. \* \* -"

Most certainly there is nothing in the section in which this word is used to indicate that it is not intended to be used in its mandatory sense. In fact, the difference in the terms used in Section 9038 and the instant section are such as to clearly indicate the legislative intent to require the county court to act upon the filing of the petition.

There is nothing in this Section to indicate that the power to act is limited to the case of an epidemic or the wide spread existence of an infectious or contagious disease. Just a casual reading of the Section itself indicates that the existence of an infectious or contagious disease refers particularly to the power to disinfect premises. Nor is there anything in the history of the enactment or the amendment thereto which indicates that this power can only be exercised during an epidemic of infectious or contagious diseases. In fact the amendments of 1925 clearly indicate, if there was ever any doubt in this matter, that the power to appoint a public health nurse or to petition therefor does not depend upon the existence of an epidemic.

## II.

THE PETITIONER MAY MANDAMUS THE  
COUNTY COURT TO ACT UPON THE  
PETITION.

It is elemental that a petition meeting the requirements of the statute be filed with the County Court before there is any obligation upon the County Court to act. The County Court has the power in the first instance to pass upon the sufficiency of the petition. They would be authorized to pass upon the genuineness of the signatures as well as upon the qualifications of the signers. However, if a sufficient petition has been presented, the acts of the county court thereafter are but ministerial and mandamus will lie to compel the performance of this duty. In case this were required the sufficiency of the petition would be one of the issues upon which the Court would have to pass.

In the case of State ex rel. Carpenter vs. City of St. Louis, 2 S. W. (2d) 713, the Court stated, in respect to the power to require the performance of a ministerial duty, l. c. 728:

"The effect of that argument is that any official may nullify any law, which he is sworn to execute, by simply ignoring it. A law does not have to provide details by which it may be enforced. The courts have inherent power to enforce it, and, in case of a plain ministerial duty such as this, to command official action. The city authorities have provided means to collect the money, they will have it in control; therefore we can command them to appropriate for the purpose contemplated by the law."

The requirements of the statute being mandatory it therefore appears that the duties of the County Court are ministerial, in the event a sufficient petition is filed, and therefore mandamus would be the proper remedy to compel the performance of that duty.

### III

THE COUNTY COURT IS EMPOWERED  
TO COOPERATE WITH STATE AND  
FEDERAL HEALTH AGENCIES AND  
LOCAL COMMITTEES IN PROVIDING  
COMMUNICABLE DISEASE PREVENTION  
AND HEALTH PROMOTION.

Section 9028 R. S. Missouri, 1929, provides:

"All rules and regulations authorized and made by the state board of health in accordance with this chapter shall supersede as to those matters to which this article relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the state board of health which may be necessary for the particular locality under the jurisdiction of such local authorities."

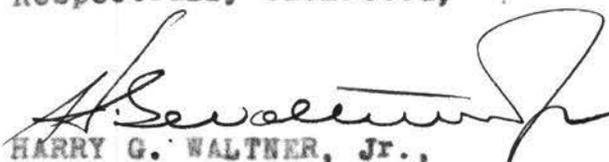
Under the provisions of this Section all local health agencies and authorities are required to observe the rules and regulations established by the State Board of Health. This is evidence of an intention on the part of the Legislature to obtain uniformity in health matters throughout the state, and insure cooperation throughout the various health agencies and authorities. The question presented is very broad and in answering it it must be remembered that the county courts are not the general agents of the County, but only have such powers which are directly given to them by statute or which can be reasonably implied from the authority given. This statement needs no citation of authority to support. On the other hand it must be remembered that the business of the county is placed in the hands of the County Court, and it should be distinctly to the advantage of a county to obtain the cooperation of the various state, federal and local agencies in the prevention of disease and the control of it. We therefore are required to answer this question conditionally. The County Court may lend such cooperation as it deems advisable to the various agencies, but must be able to find support specifically or by reasonable implication in the statutes for any expenditures they incur in this behalf.

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CONCLUSION.

It is therefore the opinion of this office, not passing upon the constitutionality of this section, that it is mandatory upon the County Court under Section 9039 R. S. No. 1929, to provide for the appointment of a public health nurse upon the presentment of a sufficient petition, and in the event the County Court fails to perform this duty it may be required to do so by mandamus; and that the County Courts are authorized to cooperate with local, state and federal health agencies in preventing communicable disease and in promoting good health to the extent authorized by law.

Respectfully submitted,

  
HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK,  
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