

HEALTH COMMISSIONER--COUNTY COURT:

County Court can require duties of County Health Commissioner not inconsistent with rules of Board of Health.

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May 13, 1935.



Honorable Tom Phelps
Presiding Judge
County Court of Jasper
Carthage, Missouri

Dear Sir:

We acknowledge your request for an opinion dated April 23, 1935, which reads as follows:

"I would like very much to have you set out in detail the duties of the County Physician, particularly whether or not he has jurisdiction over or is required to attend cases originating within the limits of any city having a City Physician.

"A short time ago our County Court visited the County Court of Greene County and while there we were told that Court had an opinion from your office stating that their county physician was required to attend cases originating outside the city."

We find no public officer known as a County Physician, but we believe you are inquiring about the Deputy State Commission of Health which a County Court may appoint by virtue of Section 9025, Laws of 1933, page 271. Said Section reads as follows:

"At the first regular February term of the county court in each county of the State after this article becomes effective and at the regular February term of said county court every year thereafter, said court may appoint a reputable physician, as a Deputy State Commissioner of health for a term of one year. In case of a vacancy in the

office of the Deputy State Commissioner of Health of the county, the county court may at its next regular term of court appoint a reputable physician for the unexpired term. But the power of deciding whether or not such a deputy state health commissioner will be appointed shall be vested in the county court. If a county court of any county decides to appoint a deputy health commissioner, as empowered in this act, it shall agree with said commissioner as to the compensation and expenses to be paid for such services which amount shall be paid out of the county treasury of the county."

The duties of the Deputy State Commissioner of Health are provided for in Section 9027 R. S. Mo. 1929. Said Section reads as follows:

"It shall be the duty of the deputy state commissioners of health for the counties to enforce the rules and regulations of the state board of health throughout their respective counties outside of incorporated cities which maintain a health officer who has been appointed a deputy state commissioner of health as provided for in section 9025. The deputy state commissioners of health for incorporated cities of less than 75,000 population shall enforce the rules and regulations of the state board of health within their respective cities. Any deputy state commissioner of health who neglects or refuses to perform his duties as required by this article shall be deemed guilty of a misdemeanor. In case of dereliction of duty or refusal to act on the part of the deputy state commissioner of health of any county, the state board of health may at their discretion declare the office of deputy state commissioner of health for that county vacant."

The County Court of Jasper County, in appointing a Deputy State Health Commissioner, had it within their power to contract the Commissioner to perform services for the County not inconsistent with the rules and regulations of the State Board of Health. The County Court's contract may legally contain duties which they deem necessary to be performed within the territorial limits of the County.

Where he holds his office and is not working for the County under a contract, then the County Court can by orders or record make rules and regulations prescribing duties which they deem necessary to be performed within the territorial limits of the County. Section 9028 R. S. Mo. 1929, reads as follows:

"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."

CONCLUSION.

We are assuming that when you speak of "County Physician" in your letter you mean to inquire about the office of "Deputy State Commissioner of Health" provided for in Laws of 1933, supra.

We are of the opinion that the Deputy State Commissioner of Health in Jasper County is duty bound to enforce all legal rules and regulations of the State Board of Health, and it is also his additional official duty to respect all health ordinances of cities located in the County, and in addition, to perform all duties prescribed by the County Court in his contract or by Court order.

Hon. Tom Phelps

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May 13, 1935.

It is not possible for us to comply exactly with your request and set out in detail the duties of the Deputy State Commissioner of Health in Jasper County. We do not have a copy of the rules of the State Board of Health, nor do we have a copy of your County's contract with the Deputy State Commissioner of Health.

It is our further opinion that the Deputy State Commissioner of Health in your County, appointed by virtue of the power in the County Court given by the 1933 Legislature has power to perform his official duties within the territorial limits of Jasper County. The provisions of Section 9027, supra, do not exclude the Deputy State Commissioner of Health from performing duties within the corporate limits of any city in Jasper County. That is to say, he is to enforce the rules of the Board of Health and is to give respect to health ordinances of all cities in the County where his duties take him.

However, the County Court, in exercising the statutory power to create this office in your County, have it within their power to require this officer to "attend cases" as specified in his contract of employment or as they may direct and it is within the power of the Court to contract or to direct the Health Officer to "attend cases" in the territorial limits of the County excluding cases arising in corporation limits, in which case the Deputy State Health Officer should refuse to "attend cases" in excluded corporate limits.

Respectfully submitted

WM. ORR SAWYERS
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APPROVED:

ROY McKITTRICK
Attorney General.