

STATE BOARD OF HEALTH: Board has authority to employ and fix compensation of employes and if a person renders service by virtue of such employment such person is entitled to back pay.

1/16  
January 15, 1937.



Honorable Herman S. Gove, M. D.,  
State Health Commissioner,  
State Board of Health,  
Jefferson City, Missouri.

Dear Dr. Gove:

This is to acknowledge your letter dated January 14, 1937, as follows:

"Please give me your opinion on the following question that was discussed at the recent meeting of the Board members of the State Board of Health.

"The question in discussion was in regard to paying back salary to the amount claimed by Mr. James Fern, former Director of the Division of Licensure. Dr. Elam, a member of the Board moved that the question be referred to the Auditor and Attorney General as to the liability of the Board, and as to its right to pay the same."

On November 20, 1934, this Department rendered an opinion to Emmett P. North, M. D., President of the State Board of Health, which in part reads as follows:

"It is therefore inescapable that the State Board would have authority to employ a director of medical licensure and to establish the amount of compensation he is to receive as well as to prescribe the other rules and conditions under which he is to be employed.

Jan. 15, 1937.

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"It is therefore the opinion of this Department that the State Board of Health was acting within the powers granted it in determining the compensation of the Director of Medical Licensure to be paid to the Director of Medical Licensure."

We are enclosing herewith copy of above opinion.

You desire our opinion as to the liability of the Board for back salary. The paying of a state salary depends upon three things: (1) An office or employment; (2) an appropriation; (3) the rendering of service by the person appointed or employed.

In the opinion heretofore quoted from, it is seen that the State Board has the authority to employ a director of licensure and fix the compensation. Whether or not the State Board did employ Mr. James Fern is a question of fact. If said person was employed and rendered service, that, likewise, is a question of fact. The State Board knows the facts. We do not know the facts. Consequently, we cannot render an opinion as to whether said person should receive back salary. Suffice it to say that if said person was appointed and rendered service for which he received no salary, then it would be only fair, just and equitable for him to be compensated.

It is our opinion that if Mr. James Fern was employed and accepted the employment and rendered service to the State, and did not receive compensation for his services, then the Board would be within its rights to pay him for his services, providing there is an appropriation.

It is well settled that public moneys may not be given to individuals unless services are rendered. Section 46, Article IV, of the Constitution of Missouri; *Kavanaugh v. Gordon*, 244 Mo. 695.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General