

STATE BOARD OF HEALTH--CITY OF ST. LOUIS: The Health Commissioner of the City of St. Louis is without authority to promulgate a rule requiring that the dead bodies of deceased persons must be embalmed before removal from said city.

August 23, 1937.

Honorable Harry F. Parker
State Health Commissioner
Jefferson City, Missouri



Dear Sir:

This is to acknowledge your request for an opinion, reading as follows:

"I am requesting an opinion on Sections 9028 and 9029 of the Revised Statutes of Missouri, 1929.

"I have received a letter from the office of the Health Commissioner in St. Louis requesting this information, a copy of which is attached."

Appended to your request is a copy of a letter directed to your attention which is also set forth, reading as follows:

"Will you please obtain for me an opinion from the Attorney General as to whether Section 9028 and 9029 of the Revised Statutes of Missouri, 1929, give our Health Commissioner, Doctor Joseph F. Bredeck, the authority to rule that the body of every deceased person dying in St. Louis be embalmed before such body could be removed from the city?"

"We are desirous of enforcing this rule in the interest of Public Health and should appreciate the opinion at your earliest convenience."

We particularly note from the second paragraph of the letter appended that the rule sought to be invoked is in "the interest of Public Health". Such an interest should evince due consideration since the care and

disposition of dead human bodies by burial, or otherwise, is closely related to the general health and welfare of the community. It is unnecessary to point out the danger that may or may not arise from dead human bodies that have been infected by an infectious or communicable disease.

With this observation it is sufficient to say that it has challenged the attention of the Legislature, and statutes have been enacted which regulate the transportation of dead human bodies; permits providing for interment and removal of such bodies, and statutes for the compilation of vital statistics. These statutes must necessarily pass our scrutiny in order to arrive at a conclusion.

We have considered the statutes mentioned in your request, sections 9028 and 9029 R. S. Mo., and deem them to be inapplicable as they relate to the present inquiry, excepting however, that section 9029 imposes the requirement that all cities having a population of over 75,000 must furnish such statistical information as the State Board may require concerning communicable diseases.

In the case of the City of St. Louis v. Galt, 179 Mo. 8, 18, the Supreme Court discussed the power of the City of St. Louis to enact ordinances in conformity with State laws, and said:

"The Constitution granted to St. Louis the right to adopt a charter, subject only to the limitations that it should be subject to and in harmony with the Constitution and laws of the State. (Const., art. 9, secs. 20 to 25.) Pursuant to this grant of power, St. Louis adopted its charter, which gave it the power, 'to declare, prevent and abate nuisances on public and private property, and the causes thereof;' 'to secure the general health of the inhabitants by any means necessary;' and 'to pass such ordinances not inconsistent with the charter as may be expedient, in maintaining the health and welfare of the city.'"

We have examined the Charter of the City of St. Louis, subdivision (a) Section 14 of Article 13, Revised Code of 1926, at page 1305, reading in part as follows:

"* * * *the health commissioner is authorized and empowered, with the approval of the director of public welfare, to make such rules and regulations, not inconsistent with this charter or any law or ordinance, as will tend to preserve or promote the health of the city;* * * *."

From the above charter provision you will notice that the Health Commissioner may promulgate rules and regulations with the approval of the Director of Public Welfare, where such rules are not inconsistent with the charter or any law or ordinance. We have examined the charter provisions and ordinances of St. Louis and fail to find any provision requiring that the body of every deceased person dying in St. Louis must be embalmed before such body may be removed from the city, nor have we found any ordinance or charter provision that would imply or contemplate that the body of every deceased person dying in St. Louis be embalmed before such body could be removed from the city.

We examine applicable State statutes.

Your attention is directed to Section 9064 R. S. Mo. 1929, relating to the preparation of dead bodies for shipment, which reads as follows:

"The body of any person having died of diphtheria (membranous croup), scarlet fever (scarlatina or scarlet rash), glanders, anthrax, leprosy or smallpox, shall not be offered to or accepted by any common carrier for transportation unless, first, it shall have been thoroughly embalmed by arterial and cavity injection with a disinfecting fluid, the orifices disinfected and packed with cotton, and the whole exterior of the body washed with a disinfecting fluid; or, second, unless it shall have been completely wrapped in a sheet that

that is saturated with a solution of bichloride of mercury, in the proportion of one ounce of bichloride of mercury to one gallon of water, and encased in an air-tight metal or metal-lined burial case, coffin, casket or box that is closed and hermetically sealed."

Section 9063 R. S. Mo. 1929, relating to when certain dead bodies are not to be transported provides:

"The body of any person having died of Asiatic cholera (cholera), typhus or ship fever, yellow fever, or bubonic plague, shall not be offered to or accepted by any common carrier for transportation unless it shall have been prepared for shipment in accordance with section 9064, and under the supervision of an officer of the state board of health, or supervision of a member of the state board of embalming."

Section 9065 R. S. Mo. 1929, relating to the preparation of bodies who have died of certain communicable diseases, provide:

"The body of any person having died of tuberculosis, puerperal fever, typhoid fever, erysipelas, measles, or other dangerous communicable diseases other than those specified in sections 9063 and 9064, shall not be offered to or accepted by any common carrier for transportation, unless such body shall have been thoroughly embalmed by arterial and cavity injection with a disinfecting fluid, as specified in section 9064; or, if such body is not so embalmed, it must be encased in an air-tight metal or metal-lined burial case, coffin, casket or box that is closed and hermetically sealed. The body

of any person having died of a disease that is contagious, infectious or communicable must not be accompanied by clothing or articles that have been exposed to the infection of such disease."

Section 9066 R. S. Mo. 1929, relating to when the destination of any dead body may be reached within twenty-four hours from the time of death, reads as follows:

"The body of any person having died of a cause or disease that is not contagious, infectious or communicable, and from which no offensive odor emits, may be offered to and accepted by any common carrier for transportation; provided the destination can be reached within twenty-four hours from the time of death of such person, but if the destination cannot be reached within twenty-four hours from the time of such death, then the body must be thoroughly embalmed by arterial and cavity injection with a disinfecting fluid, or encased in an air-tight metal or metal-lined burial case, coffin, casket or box that is closed and hermetically sealed."

You will note that the above statutes set forth do not contemplate the embalming of any dead body, unless such dead body shall have died from one of the diseases specified, when such body is offered for transportation. You will further notice that under the provisions of Section 9065, supra, that even should the body have died of a communicable disease as designated in said section need not even be embalmed, if such body is encased in an air-tight metal box that is hermetically sealed. You will have further noted that the body of any deceased person, having died of a cause or a disease that is not contagious, need not be embalmed, provided that the destination can be reached within twenty-four hours of the death of such person. The statutes above set forth are plain and need no interpretation. Thus it will be seen when a dead body is to be transported by any common carrier that such dead body need not be embalmed, unless such dead body shall have died as a result of the diseases specified in the above sections of the statutes.

For the purpose of effectively compiling the registration of all births and deaths occurring within this State, the State has been divided into registration districts. Section 9042 R. S. Mo. 1929.

Within each of the registration districts local registrars have been appointed by the State Board of Health for the purpose of recording vital statistics pertaining to births and deaths. Section 9043 R. S. Mo. 1929.

Section 9044 R. S. Mo. 1929, as amended, laws of Mo. 1933, p. 270, relating to the requirements of a removal or burial permit from the local registrar of the registration district from which the death occurs, reads in part as follows:

"The body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district until a permit for burial, removal or other disposition shall have been properly issued by the local registrar of the registration district in which the death occurs. Provided, no such removal permit shall be required when a dead body is removed for the purpose of preparing such body for burial, but no such body shall be interred, deposited in a vault or tomb, cremated or otherwise disposed of until a permit so to do has been properly issued by the local registrar of the registration district in which the death occurs. * * * *"

In construing the above part of the statute you will note that, before the body of any person may be removed from one registration district into another, a permit for such removal must be issued by the local registrar of the district wherein the death occurs. However, the proviso, which is a limitation upon the requirement for such a permit, *Brown v. Patterson*, 124 S. W. 1, does not require the permit when the body is to be removed for the purpose of preparing such body for burial. Thus it will be seen that the Legislature did not intend the dead body to be embalmed before leaving one district for removal into another district.

Hon. H. F. Parker

-7-

August 23, 1937.

Returning in our consideration to the proposed rule, it will have been noted that such rule, if promulgated, would be repugnant to the statutes hereinabove set forth, and when we throw back the portals which prompted the proposed enactment of such a rule, we find it to be discriminatory against embalmers and undertakers not engaged in business within the City of St. Louis, Missouri.

CONCLUSION.

In view of the above, it is the opinion of this department that the Health Commissioner of the City of St. Louis is without authority to make any rule which has for its purpose the embalming of the body of every deceased person dying in St. Louis, before removal of such body from the City, which would nullify the operation of the provisions of the State's statutes.

Yours very truly

RUSSELL C. STONE
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

RCS:H