

HEALTH:
SALARIES AND FEES:

Appointees of State Board of Health are
not allowed additional pay for grading
of examination papers.

April 12, 1939



Dr. C. F. Adams
State Board of Health
Jefferson City, Missouri

Dear Sir:

This is in response to your request of recent date
wherein you request an opinion on the following question:

"Last November I was asked by Dr.
Harry F. Parker to substitute for
him in grading some examination
papers, said examination papers
having been submitted by applicants
for medical license in Missouri.
Dr. Parker was busy with other things
at that time, hence his request.

"Recently, March 6th, 1939, Mr. William
Dorsey, Auditor for the State Board
of Health, handed me a check for
\$25.00, saying the check was payment
for my grading said examination papers
last November.

"Being a regular employee of the State
Board of Health, it has occurred to me
that probably I am not entitled to this
check for \$25.00, because my regular
salary of \$300.00 per month plus this
check might be construed as a double
salary, for which there is no proper
authority. Hence this request for an
official opinion from you with refer-
ence to this matter.

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"On page 110 of the 1937 Laws -
Fifty-ninth General Assembly -
you will find that the sum of \$15,000
was appropriated for

"A. Personal Service:

"Compensation for Members of the Board
and consultant, salary of reporter,
notary and witness fees and cost of
investigations and hearing..\$15,000.00'

"That is under Section 39. State Board
of Health - Medical Licensure.

"On page 111 of the same book of laws
you will find this:

"Laboratory:

"Director, bacteriologist, assistant
bacteriologist, water technicians,
relief technicians, stenographers,
clerks, helpers and janitors..\$43,680.00'

"This is under Section 40. State Board
of Health - Department of Health. A.
Personal Service.

"I have been informed that the services
I rendered by grading the above-mentioned
examination papers were in addition to my
services as Director of the Division of
Laboratories. The check in question was
paid out of the personal service fund under
Medical Licensure - so I am wondering if
I am entitled to it."

You stated in your letter that you have graded some
examination papers of applicants for medical licenses and
that you did this for Dr. Harry F. Parker who is the State
Health Commissioner.

By Section 9113, R. S. Mo. 1929, the State Board of
Health is authorized to hold the examinations to which you

refer and by Section 9119, R. S. Mo. 1929, a fee is provided for which is to be used for the payment of maintaining the expenses of the Board of Health. In 1935 the lawmakers provided compensation for the members of the State Board of Health. Laws of Missouri, 1935, page 266, Section 9020, is as follows:

"The commissioner of health shall perform such duties as may be prescribed by the board and this article. Each member of the board shall receive as compensation for his service the sum of Ten Dollars (\$10.00) for each day engaged in this service and all legitimate and necessary expense incurred while employed on the business of the board. The president of the board shall certify the amount to the commissioner of health and the per diem, traveling and other expenses of members and on presentation of this certificate the auditor of state shall draw his warrant on the state treasurer for the amount."

It will be noted from this section that the Commissioner of Health shall perform such duties as may be assigned to him by the Board, and we assume that the duty of grading these examination papers is one that has been assigned to him by the Board. The appointment, qualifications and compensation of the Commissioner of Health are provided for in Laws of Missouri, 1933, Section 9024 at page 269. This section is as follows:

"The Governor, by and with the advice and consent of the Senate, shall appoint a Commissioner of Health, who shall hold his office for a term of four years, and who shall be a physician in good standing and of recognized professional and scientific knowledge and a graduate of a reputable medical school, and shall have been a resident of the State for at

least five years next preceding his appointment, and in making such appointment there shall be no discrimination made against the different systems of medicine that are recognized as reputable by the laws of this State. The Commissioner of Health shall be subject to removal from office for cause by the Governor at his pleasure. The compensation of the Commissioner of Health shall be five thousand dollars (\$5000) per annum. He shall also receive traveling and other expenses necessarily incurred in the performance of his duties. The Commissioner of Health as hereby constituted shall assume all the rights, powers, privileges and duties heretofore conferred by law upon the Secretary of State Board of Health heretofore authorized by law, which office is hereby abolished. Where any law refers to the Secretary of the State Board of Health as heretofore constituted, same shall, after the passage of this Act, be construed as referring to and meaning the Commissioner of Health as hereby and herein constituted."

The office of the Commissioner of Health was created in lieu of the office of the Secretary of the Board of Health whose duties were prescribed by Section 9020, R. S. Mo. 1929. These duties were such as may be prescribed by the State Board of Health. Under the old act the salary was fixed by the State Board of Health. The State Board of Health is an administrative body and it is a creature of the statute and we must look to the statute for its powers and duties. In State ex rel. v. Goodier, 195 Mo. 551, our Supreme Court has held that this board was an administrative body.

In your request you refer to the 1937 appropriation act. On the question of whether or not this fee which has been tendered to you for your services in grading these papers is for additional duties, we do not think the

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appropriation act sheds any light. Even if the appropriation act included such an item, in order for it to be legal, it would have to be supported by some law. In our research on the question we do not find where this service that you have performed could be classed as an additional duty for which additional compensation would be allowed. As stated in your request you are a regular employee of the State Board of Health and it seems that that Board has the authority to assign to its employees whatever duties it deems proper.

On the question of the right of a person to claim public funds, he must be able to point out the statute authorizing the payment of same. In *State ex rel. v. Brown*, 146 Mo. 401, 406, the rule is stated in the following language:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. *State ex rel. v. Wofford*, 116 Mo. 220; *Shed v. Railroad*, 67 Mo. 687; *Gammon v. Lafayette Co.*, 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.'"

CONCLUSION.

From the foregoing it is the opinion of this department that your services in grading the papers of

Dr. C. F. Adams

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medical applicants would not be classed as an additional duty authorizing you to receive compensation therefor and in addition to your regular salary paid you as an employee of the State Board of Health.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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