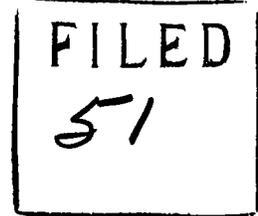


BOARD OF NURSES:

Nurses working under United States Health Service are not compelled to obtain nurse's license.

December 8, 1941



Laura Layher, R.N.
Executive Secretary
Missouri State Board of
Nurse Examiners
Jefferson City, Missouri

Dear Madam:

We are in receipt of your request for an opinion under date of December 2, 1941, which is as follows:

"The Board desires an opinion concerning the Missouri licensing of the U.S. Public Health Nurses.

"Is it necessary for the U. S. Public Health nurses, who are regular federal Civil Service employees and who are brought to this state because of the federal emergency and who will work under the direction of the State agency, to be registered in Missouri?

"These nurses are on the federal payroll and come to Missouri on the lend-lease basis, from the U.S. Public Health Service, and will be temporarily in Missouri.

"They are all licensed nurses, having registered in their original state.

"Your opinion will be appreciated."

The nurses are employed under the Public Health Service by virtue of Section 803, Title 42, United States Code Annotated, page 211. Under this authorization the nurses are allowed allowances for expenses.

Section 10032, R.S. Missouri 1939, describes the qualifications of a nurse and also describes the method of obtaining a license. This section is not applicable to employees of the United States and who are considered instrumentalities of the United States Government. The United States Public Health nurses derive their authority solely from the Public Health Service as hereinbefore set out. There is no question but that they are instrumentalities of the United States Government.

The Supreme Court of the United States, in holding that an employee, who is a member of such instrumentality of the United States Government, is not required to pass an examination or pay license fees in the case of William E. Johnson, v. State of Maryland, 254, U.S. 51, page 55, said:

"* * * Here the question is whether the state can interrupt the acts of the general government itself. With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the state's inability to interfere has been regarded as established since M'Culloch v. Maryland, 4 Wheat. 316, 4 L.ed. 579. The decision in that case was not put upon any consideration of degree, but upon the entire absence of power on the part of the states to touch, in that way, at least, the instrumentalities of the United States (4 Wheat. 429, 430), and that is the law today. * * * * *"

And the court further said:

"It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer, upon examination, that they are competent for a necessary part of them, and pay a fee for permission to go on. Such a requirement does not merely touch government servants remotely by a general rule of conduct; it lays hold of them in their

specific attempt to obey orders, and requires qualifications in addition to those that the government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work, and that duty it must be presumed has been performed. * * * * *

CONCLUSION

In view of the above authorities it is the opinion of this department that it is not necessary for the United States Public Health Nurses, who are regular federal Civil Service employees and who are brought to this state because of the federal emergency and who will work under the direction of the State agency, to be registered in Missouri in accordance with Chapter 61 R.S. Missouri 1939.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General