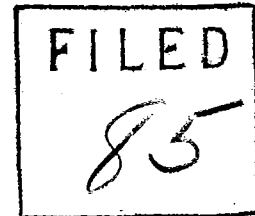


BOARD OF HEALTH: Commissioner of Health has a right to investigate the health conditions of a county jail, and should report his findings to the County Court and the Circuit Judge of the particular county, and may furnish his report to the City Council of the city in which the jail is situated.

July 19, 1941

Dr. James Stewart  
State Health Commissioner  
Jefferson City, Missouri



Dear Sir:

We are in receipt of your letter of July 16, 1941, enclosing a copy of a letter written to your department by B. T. Shukers, Justice of the Peace, Waynesville, Missouri, and requesting an opinion from this department, which request reads as follows:

"I am enclosing herewith a copy of a letter from Mr. B. T. Shukers, Justice of the Peace, Cullen Township, Pulaski County, Waynesville, Missouri. As you will note, this official is complaining of the insanitary condition of the County Jail of Pulaski County located at Waynesville, Missouri. If this jail, as set forth in the attached letter, does constitute a filthy insanitary condition and menace to the health of inmates, I am in doubt concerning my authority with regard to such a county institution.

"I would appreciate being advised as to my authority as State Health Commissioner to abate a health menace maintained by a county and further if so empowered, how, in your opinion, I should proceed as State Health Commissioner to secure a remedy, granting that an insanitary and unhealthful condition exists."

In reply, we quote the sections of the statute which we think are pertinent to the situation outlined in the request above, and later we shall refer to the several sections by number.

Section 9193, R. S. Mo. 1939:

"There shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this state, to be located at the permanent seat of justice for such county."

Section 9205, R. S. Mo. 1939:

"It shall be the duty of the grand jury, at each term, or a committee, to consist of at least three members thereof, to visit the jail of their county, and examine the condition thereof, and inquire into the treatment of the prisoners, and make report thereof to the court."

Section 9206, R. S. Mo. 1939:

"It is hereby made the special duty of the court having criminal jurisdiction, at each term, to inquire and see that all prisoners are humanely treated."

Section 13730, R. S. Mo. 1939:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

In the case of Kansas City Disinfecting & Mfg. Co. v. Bates County, 273 Mo. 300, l. c. 305, the court had this to say in passing upon what is now Section 9193:

"It is not doubted that the statutes (Secs. 1571 and 1573, R. S. 1909) and the construction thereof by this court in a case to an extent analogous (Harkreader v. Vernon County, 216 Mo. 696) furnish authority to a sheriff of a county to purchase such articles and supplies as are requisite and necessary to keep and maintain the county jail 'in good and sufficient condition and repair.'"

From the above authority, and by the terms of Section 9193, supra, the sheriff of the county apparently has the right to make necessary and emergency repairs of a minor nature in the upkeep and management of a county jail, so long as such repairs are reasonable.

It will be noted from a reading of Section 9205, supra, that the grand jury, when in session, shall visit the county jail and examine its condition and inquire into the treatment of the prisoners. Thus, the Legislature has provided a second means looking to the care and maintenance of county jails.

It will also be noted in reading Section 9206, supra, that the court having criminal jurisdiction shall inquire into and see that all persons are humanely treated. Thus, under this section, we think the judge of the circuit court of the county would also have a right to make investigation and to make such orders as he saw fit to the end that the jail was properly maintained in the county. We think further that wherein the section says that the prisoners shall be humanely treated would mean not only that the prisoners could not be physically tormented, but that the term is sufficiently broad to mean that a prisoner should not be subjected to a jail in which the conditions were such that it would be similar to the dungeons of old.

It will be noted from reading Section 13730, supra, that this section casts the duty upon the county court to keep the jail in good repair, in accordance with the financial ability of the particular county.

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In the case of State ex rel. v. Bollinger, 219 Mo. 204, l. c. 223, 117 S. W. 1132, the court had this to say:

"Clearly that section of the statute (referring to Sec. 13730, supra) gives the county court of Stoddard county jurisdiction over the subject-matters complained of in the petition; and the pleadings, evidence and report of the referee filed herein disclose the fact that the county has sufficient money on hand with which to pay for the proposed improvements. That being true, then the county court of that county was acting within its jurisdiction, and prohibition will not lie. (State ex rel. v. Reynolds, 209 Mo. 161; State ex rel. v. Riley, 203 Mo. 175.)"

It will be noted, therefore, from a reading of the afore-said sections of our statute that the Legislature has carefully provided the machinery for the upkeep of a county jail, and has cast upon the sheriff, the county court, the grand jury, when they are in session, and the circuit judge the duty to see that the county jail is kept in good repair, and that the persons who are incarcerated in said jail shall be treated humanely.

Now, turning to the portion of your request wherein you ask to be advised as to the authority of the State Health Commissioner when a situation exists wherein a jail is kept in an unsanitary and unhealthy condition, Section 9735, R. S. Mo. 1939, reads as follows:

"It shall be the duty of the state board of health to safeguard the health of the people in the state, counties, cities, villages and towns. It shall make a study of the causes and prevention of diseases and shall have full power and authority to make such rules and regulations as will prevent the entrance of infectious, contagious, communicable or dangerous diseases into the state. It may send representatives to public health conferences when deemed advisable, and the expenses of such repre-

sentatives shall be paid by the state as provided in this chapter for expenses of the members of the state board of health."

It will be noted in reading the above section that it shall be the duty of the State Board of Health to safeguard the health of the people in the state, counties, cities, villages and towns. We are of the opinion that this language clearly contemplates that the Commissioner of Public Health shall have the right to investigate each and every jail throughout the state, for the reason that in all instances the county jail is located within the city limits of some particular municipality, and by its nature it is a place where people are incarcerated from time to time, and certainly a jail could get into such a condition that infectious, contagious, communicable or dangerous diseases could emanate therefrom.

However, when we view the cases which have arisen in the courts wherein this section has been construed, we find that in the case of State ex rel. v. Goodier, 195 Mo. 551, l. c. 559, the court had this to say:

"The gravamen of the complaint in the petition is that the board is going to try him without exercising compulsory process to bring before it the witnesses he needs for his defense. The State Board of Health is not a court, is not a judicial tribunal; it can issue no writ, it can try no case, render no judgment; it is merely a governmental agency, exercising ministerial functions; it may investigate and satisfy itself from such sources of information as may be attainable as to the truth or falsity of charges of misconduct against one holding one of its certificates, but its investigation does not take on the form or character of a judicial trial."

It will be noted in reading the foregoing excerpt from the Goodier case that the State Board of Health is not a judicial tribunal, but is merely a governmental agency exercising ministerial functions, and may investigate.

From reading the Goodier case, and due to the fact that the several sections of the statute exist as set forth in the first part of this opinion, we are of the opinion that the Commissioner of Public Health would unquestionably have the right to investigate the jail referred to in the opinion request, and to make his report as to the condition and whatever suggested changes that may be needed to the end that the jail may be reasonably repaired and maintained, but we think the duty would be upon the Commissioner of Public Health to report his findings to the county court of the particular county and to the circuit judge of the county, or, if a grand jury were in session, to appear before the grand jury. We are further of the opinion that the legal duty is cast upon the county court or the circuit judge, or both, to carry out and provide the necessary repairs, and to take such steps as are necessary to see that the jail is maintained in a reasonably healthful manner.

In reading from Joyce on Injunctions, Vol. 2, pp. 1520-1521, we find that there have arisen cases in the United States wherein the courts have upheld the right of a municipal corporation to maintain an injunction against a county wherein the county erected in the town an obnoxious cess-pool. See Llano City v. Llano County, 5 Tex. Civ. App. 132, 23 S. W. 1008. In that case the court reasoned that a city corporation is a governmental agency, and has been given authority and power to abate nuisances, and has the right to resort to a court of equity to aid it by injunction.

It will also be noted in this work, at page 1521, that a board of health has been allowed to maintain an action for an injunction where the state and city ordinances so provide and the nuisance endangers the public health. However, in the State of Missouri we do not find any specific statute which gives the Commissioner of Public Health this right, and we are inclined to the view that the power and duty is in the hands of the county court and the circuit judge.

It will be noted in reading the cases cited in Joyce on Injunctions, supra - Board of Health of Yonkers v. Capcutt, 140 N. Y. 12, 23 L. R. A. 485, and Village of White Plains v. Tarrytown, W. P. & M. R. Co., 117 App. Div. (N.Y.) 841, that the board of health must bring the action in the name of the city, and the nuisance complained of must be set out in detail

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in the petition, and the board of health cannot declare a nuisance and order it abated. These decisions, we think, are in conformity with the principles set forth in the Goodier case, supra.

CONCLUSION

We are of the opinion that the Commissioner of Health has the right to investigate the health conditions of a county jail and to make his report, and that such report should be presented to the County Court and the Circuit Judge of the particular county, or the City Council of the city wherein the jail is situated, in the discretion of the Commissioner of Health.

Respectfully submitted

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

BRC:HR