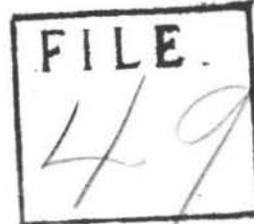


HEALTH, BOARD OF: Clerk of City Board of Health is to remain as the local State Registrar in the City of St. Joseph, Missouri, a city of the first class unless removed by failure or neglect of duty.

May 19, 1942.

Mr. Homer C. King
City Counselor
St. Joseph, Missouri



Dear Sir:

Your letter dated May 13th, 1942, requesting an opinion has been referred to me. This request is as follows:

"In January 1942, the Commissioner of the State Board of Health, appointed a new local state Registrar of Vital Statistics for the City of St. Joseph, when prior thereto and ever since the organization of the State Bureau, the Clerk of the local city Board of Health, had acted as local State Registrar, so that all of the vital statistics were handled through the one office and permitted us keeping up our records under our ordinances so that complete records for the past 32 years have been kept.

"After the appointment of the new local State Registrar, a demand was made by a representative of the State Board that all of our files and records be turned over to the new local State Registrar, which request the City Board of Health refused, maintaining that they were the local records made out by the Clerk of the Board of Health of our city and preserved under the regulations and ordinances providing for same by the city.

"Then, since the change of registrars, information has been put out among the

doctors, cemetery sextons and the undertakers that the State Registration laws superseded our local requirements so that it was not necessary for any of them to comply otherwise with the requirements of our local city ordinances.

"There are three (3) questions which we herewith present and request your opinion on them. In presenting these questions for your opinions the Mayor and City Council of St. Joseph, its Board of Health and certain of the physicians and all of the undertakers and cemetery sextons have requested that we obtain your opinions on these matters. Supplementary to this letter we set out the ordinances involved, some of the charter provisions of cities of the first class, and some sections of the laws relating to the State Bureau of Health which are involved in this matter, together with a few suggestions to aid in your investigation.

"If there are any further details that you would like to have, we will be glad to furnish them or assist you in any way that we can.

"The questions are as follows:

"QUESTION ONE: Does the City of St. Joseph have the right, under its charter as a city of the First Class, and its ordinances herein set out, to require the registration of births and deaths and require burial permits from the Clerk of the Board of Health of this city before the interment or removal of dead bodies in the city.

"In other words, are these ordinances requiring the registration of births and deaths with the City Board of Health and the ordinance requiring burial permits from the Clerk of our Board of Health, valid?

"QUESTION TWO: Assuming that the City of St. Joseph has maintained an efficient and competent local registration bureau; Did the Commissioner of the State Board of Health (In view of Sections 9763 and 9749), have the right to remove, discharge or discontinue our Clerk of the City Board of Health as local state registrar of vital statistics for this city in January 1942, without cause other than his desire to give the place to another person with the emoluments thereof?

"QUESTION THREE: Is it necessary for the City of St. Joseph Board of Health to turn over to the new local state registrar our books of records of vital statistics consisting of the bound volumes of duplicates of registrations prepared and filed in this office by the Clerk of the City Board of Health as explained herein?"

The request contains three questions which we will endeavor to answer in order. However, in rendering our opinion on these questions, we are assuming per your letter that (1) the Registration Bureau in the City of St. Joseph is an efficient and competent bureau and that (2) the official sought to be removed has not been replaced through failure and neglect of duty but only through the "desire to give the place to another person with the emoluments thereof."

The facts seem to show that St. Joseph became a city of the first class in 1909 and at that time all the laws or parts of laws, not inconsistent with provisions of the article designating such city as being of the first class, and which ordinances were operative in the city prior to its reorganization, should continue in force until repealed or changed by ordinance. Further, that at the time of reorganization of the city, there were ordinances providing that there should be a record kept of all births, marriages and deaths and that burial permits should be procured before the burial of any bodies.

Under paragraph 18 of Section 6293, R. S. Mo. 1939, which section has to do with the powers and duties of the

Mayor and Council in a city of the first class, we find the following:

"XVIII. To provide for the registration of births, marriages and deaths, and to suppress prize fights, bull fights, dog fights, chicken cock fights, gaming or gambling houses, and to suppress bawdy and disorderly houses, houses of ill-fame and assignation."

We will next cite you to Section 6538, R. S. Mo. 1939, which section provides for the establishment of a Health Department in all cities of the first class in Missouri, in which category St. Joseph falls. Said section is as follows:

"There is hereby established in all cities of the first class a department to be known as the health department, which shall be under the control of a board of health, which shall consist of three members, who shall serve without compensation and who shall be appointed by the mayor, as are other appointive officers. The mayor in such cities shall be ex officio a member of said board of health, and may be present at its hearings and deliberations, and make such recommendations as he may see fit, and take part in all matters coming before said board of health, but shall not be entitled to a vote."

Section 6540, R. S. Mo. 1939, then prescribes the powers and duties of the Board of Health of such city which is created by Section 6538, supra. This section provides as follows:

"Said board shall have power and it shall be its duty to enforce the laws of the state of Missouri and all ordinances in relation to public health; to have the care, management and control of all buildings, institutions and property owned or used in such city as hospitals

or institutions for the care and treatment of sick or injured persons, or as quarantine hospitals or stations within or without the corporate limits of such city, and to have the custody of all persons confined therein; to direct the inspection of every part of such city and its environs, with a view to the maintenance of the sanitary condition of such city, and for such purpose shall have power to enter any public building or premises, and, on reasonable notice, any private building or premises, whenever the same may become necessary in the discharge of the duties imposed on said board; to have charge of the inspection of dairies, milk, meat, all foodstuffs, and all water supplies for drinking purposes; to enforce all pure food laws; to investigate the nature of all contagious or infectious diseases, and take measures to prevent their development or continuance, by quarantine or otherwise, and when necessary to the public health and safety, to order the destruction of animals suffering from any contagious or infectious diseases, and the building within which they have been sick of such diseases; to abate all nuisances in such city, and to regulate the sanitary condition of all morgues, cemeteries, crematories, vaults, and burial places, and the disposition of dead bodies of persons and animals; to provide for the registration of births, marriages and deaths within such city; to perform such other duties as may be conferred by ordinance."

As can be seen from this section, the Board of Health of your city has the power to regulate the registration of "births, marriages and deaths" in such city.

Section 9764, R. S. Mo. 1939, dealing with the procurement of a burial permit, provides 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. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided: Provided, that when a dead body is transported by common carrier into a registration district in Missouri for burial, then the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, when said death occurs outside of the state of Missouri, shall be accepted by the local registrar of the district, into which the body has been transported for burial or other disposition, as a basis upon which he shall issue a local permit, in the same way as if the death occurred in his district, but shall plainly enter upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; but a burial permit shall not be required from the local registrar of the district in which interment is made when a body

is removed from one district in Missouri to another in the state, for purpose of burial or other disposition, either by common carrier, hearse, or other conveyance; and no local registrar shall, as such, require from undertakers or persons acting as undertakers any fee for the privilege of burying dead bodies."

We do not think that the ordinance of the City of St. Joseph in any way conflicts with the State statute cited above.

In view of the statutes cited supra, it is the opinion of this Department that the city of St. Joseph has the authority, through its Health Department, to regulate by ordinance the registration of births and deaths in said city, and to require the possession of a burial permit before any body is interred.

"QUESTION TWO: Assuming that the City of St. Joseph has maintained an efficient and competent local registration bureau: Did the Commissioner of the State Board of Health (In view of Sections 9763 and 9749), have the right to remove, discharge or discontinue our Clerk of the City Board of Health as local state registrar of vital statistics for this city in January 1942, without cause other than his desire to give the place to another person with the emoluments thereof? "

We will cite you to Section 9763, R. S. Mo. 1939, which provides as follows:

"Within ninety days after the taking effect of this article, or as soon thereafter as possible, the state board of health shall appoint a local registrar of vital statistics for each registration district in the state. The term of office of local registrars, appointed by said board, shall be for four years, beginning with the first day

of January of the year in which this article shall take effect, and their successors shall be appointed at least ten days before the expiration of their terms of office: Provided, that in cities where health officers or other officials are conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this article, such officers shall be continued as registrars in and for such cities, and shall be subject to the rules and regulations of the state registrar, and to all of the provisions of this article. Any local registrar appointed by said board who fails or neglects to discharge efficiently the duties of his office as laid down in this article, or who fails to make prompt and complete returns of births and deaths, as required thereby, shall be forthwith removed from his office by the state board of health, and his successor appointed, in addition to any other penalties that may be imposed, under other sections of this article, for failure or neglect to perform his duty. Each local registrar appointed by said board shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and who shall accept such appointment in writing, and who shall be subject to all rules and regulations governing the action of local registrars. And when it may appear necessary for the convenience of the people in any registration district, the local registrar is hereby authorized, with the approval of the state registrar, to appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the registration district as may be designated; and each subregistrar

shall note, over his signature, the date on which each certificate was filed, and shall forward all certificates to the registrar of the district within ten days, and in all cases before the third day of the following month; Provided, that all subregistrars shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform their duties in accordance with the provisions of this article of the rules and regulations of the state registrar, and they shall be liable to the same penalties for neglect of duties as the local registrar: Provided, that on and after July 1, 1937, in all counties having or which may hereafter have a population of two hundred thousand inhabitants and less than four hundred thousand inhabitants according to the last federal decennial census, where a deputy state health commissioner shall have been appointed by the county court, such deputy state health commissioner shall be the local registrar and shall be subject to all rules and regulations governing the action of local registrars, prescribed by this article."

This section was originally passed on May 6, 1909. The information furnished this Department shows that an ordinance of St. Joseph provided for the Clerk of the Board of Health to register births, marriages and deaths as early as 1891 or eighteen years preceding the passage of the State law.

Again citing a portion of Section 9763, supra, we find the following:

"Provided, that in cities where health officers or other officials are conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this article, such officers shall be continued as registrars in and for such cities, and shall be subject to the rules and regulations of the state registrar, and to all of the provisions of this article. * * *"

According to the facts as furnished this Department, the Health Department was conducting an effective registration of births and deaths at the time the State provisions were passed. Then under the provision above, the officer having charge of the registration at that time, remained as the local "registrar" for such city only to be removed for "failure or neglect of duty." We feel that the legislators did not intend, in passing this provision, to supersede the powers of the city of the first class. Rather we think that it was the intention of the lawmakers to let a city which had a well organized and efficient Health Department, take care of their own registration and that the officer selected by the Board of Health of such city should remain as the local state registrar for that city, unless removed for failure or neglect of duty. This intention on the part of the legislators has been recognized by the fact that for the past thirty-two years the Clerk of the City Health Department has been local registrar in the City of St. Joseph.

It is, therefore, the opinion of this department that the City Clerk of the Health Board of the City of St. Joseph is the local registrar for that city, until he is removed for failure or neglect of duty. Further, that the appointment of any other person to replace him by the State authorities, was void unless he was removed for those reasons.

"QUESTION THREE: Is it necessary for the City of St. Joseph Board of Health to turn over to the new local state registrar our books of records of vital statistics consisting of the bound volumes of duplicates of registrations prepared and filed in this office by the Clerk of the City Board of Health as explained herein?"

This question is superfluous in view of our opinion on question two. In other words, if the records are still in the possession of the Clerk of the City Board of Health, which your request seems to indicate, he remains as local registrar for the city and is still the legal custodian of the records. Therefore, if a demand is made for the records by some person without authority, he is under no compulsion to relinquish possession of same. If the clerk had been removed for failure or neglect

Mr. Homer C. King

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of duty, there would be a different question presented since he would not be the legal custodian.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McRITTRICK
Attorney-General

JSP:EG