

STATE BOARD OF HEALTH: Cannot pass rules and regulations which apply to only one county.

August 26, 1942.

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Dr. James Stewart
Commissioner of Health
Jefferson City, Missouri

Dear Dr. Stewart:

The Attorney-General wishes to acknowledge receipt of your letter of August 22d, in which you request an opinion from this department. Such request, omitting caption and signature, is as follows:

"It is the belief of the county health department in one of our larger counties that the present State Board of Health Regulations are not adequate for that particular county and it has been requested that specific regulations be prepared which would be applicable to the larger counties in Missouri.

"I would appreciate an opinion from you regarding the authority of the State Board of Health of Missouri to adopt specific regulations which would be applicable only to certain counties in the higher population groups."

In answer to your question we will first cite you to Section 9735, R. S. Mo. 1939, which provides the following:

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

The next provision touching on this matter is Section 9748, R. S. Mo. 1939. It prescribes the following:

"All rules and regulations authorized and made by the state board of health in accordance with this chapter shall supersede as to those matters to which this article relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the state board of health which may be necessary for the particular locality under the jurisdiction of such local authorities."

It is apparent from a study of Section 9735, cited above, that the State Board of Health has the power and authority to prescribe rules and regulations for the prevention of disease in the State of Missouri. It is also the rule in Missouri, that the rules and regulations of the State Board of Health are to receive liberal construction. In *State v. Clark*, 9 S. W. (2d) 635, 320 Mo. 1190, the court said:

"Nevertheless it is a wholesome and well-recognized rule of law that powers conferred upon boards of health to enable them to effectually perform their important functions in safe-guarding the public health, should receive a liberal construction."

However, after reading Section 9748, supra, we find that the rules and regulations of the State Board of Health shall supersede as to those matters contained in Chapter 57, Article 1, which refers to the matters cited above, all local ordinances, rules and regulations. It further states that such rules and regulations of the State Board of Health "shall be observed throughout the State and enforced by all local and State health authorities." The above quotation would infer that if the rules and regulations are enforced by all local and State health authorities, such provisions would necessarily apply to all parts of the State alike.

We can readily understand that there are certain conditions which might arise in a county with a large population, which would not be present in a less populous county. However, the mere fact that a certain condition exists in only one county at the time of the passing of a regulation by the State Board of Health, would be no guarantee that at a later date such condition would not be present in a smaller county. If a regulation were passed regulating an obnoxious situation in one large county, and was meant to apply to that county alone, and at a later date such condition arose in a smaller county, then the condition in question would be regulated in one county and would not be regulated in another. In view of the fact that anyone violating any of the rules and regulations of the State Board of Health shall be guilty of a misdemeanor, as set out by Section 9750, R. S. Mo. 1939, then we would have the situation that a person violating the regulation in the large county would be subject to criminal prosecution but another person committing the same act in a smaller county would be immune.

In speaking of the constitutionality of statutes the Supreme Court of Missouri in the case of St. Louis Union Trust Co. v. State, 155 S. W. (2d) 107, the court said:

"If there is a reasonable ground for the classification and the law operates equally on all within the same class, it is valid."

If the Board of Health passes a regulation which "operates equally on all within the same class," it will be necessary that its rules and regulations apply to all counties in the State.

Furthermore, we would like to call your attention to the last sentence in Section 9748, R. S. Mo. 1939, cited above. Such sentence prescribes the following:

"Nothing herein shall limit the rights of the local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the State Board of Health which may be necessary for the particular locality under the jurisdiction of such local authorities."

It seems to us that the Legislature in passing this article intended that the Board of Health should pass general rules and regulations which would apply to all counties, and if any unusual situation arose in any particular county, that it was then to be the duty of the local authorities to regulate such conditions.

Conclusion

Therefore, it is the opinion of this department that the State Board of Health would not have the authority to pass a special set of rules and regulations for one particular county, on the grounds that it is a large county and the general rules and regulations are insufficient due to peculiar conditions existing in such county. We think that the Board of Health may pass only rules and regulations which will apply equally to all counties under the same circumstances. If strictly local regulations are required, Section 9748, R. S. Mo. 1939, provides that the local health authorities shall regulate it provided they do not pass regulations which conflict with the general State regulations.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General