

HEALTH, BOARD OF:

Resorts and recreational camps not subject to inspection by State Board of Health.

October 26, 1942.

10-28



James Stewart, M. D.  
State Health Commissioner  
Jefferson City, Missouri

Dear Dr. Stewart:

The Attorney-General wishes to acknowledge receipt of your letter of October 19, 1942, in which you request the opinion of this Department. Your request, omitting caption and signature, is as follows:

"Reference is made to our resort and tourist camp program which this year has been broadened to include organizational camps on the basis of the underlined portion of Section 9955, Article 6, Chapter 58, Revised Statutes of Missouri 1939 reading in part as follows:

"The State Board of Health is empowered and it is hereby made their duty through their deputies to have inspected, at least annually and as often as shall be necessary, for the proper regulation and sanitation thereof, all tourist camps, cabins or resorts of whatever kind kept, used, maintained or advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests in which two or more cabins, whether in combination or under separate roofs, are furnished for the accommodations of guests."

"This policy was adopted inasmuch as these camps, without exception, make a charge of

some type for the accommodation of each guest. Such charges however are not usually sufficient to render the establishment a profit and are used to supplement grants, charities, etc., made for the purpose of operating these camps.

"Our authority to license such camps has been questioned by certain operating agencies. One camp has submitted this question to an attorney. The attorney contends that inasmuch as the title of the tourist camp law as contained on page 415 of the Laws of 1939 reads in part as follows, 'providing for the inspection and regulation by the State Board of Health of tourist camps, cabins, or resorts maintained or advertised for public use', the law is not applicable to organizational camps inasmuch as such camps are not open to the general public. Inasmuch as this camp is open to all boy scouts of the area surrounding a large city, it is, in our opinion, a public institution.

"We wish to be advised, therefore, whether or not camps maintained by such agencies or organizations as Boy Scouts, Girl Scouts, YMCA, YWCA, YMHA, Rotary Clubs, Kiwanis Clubs, etc., are subject to Article 6, Chapter 58, Revised Statutes of Missouri 1939, in so long as such camps require payment of fee for each guest visiting these camps."

There seems to be but one question involved in your request for an opinion, and that is the definition of the term "public use."

As can be noted in the title of Senate Bill No. 7, found on page 415, of the Laws of Missouri for 1939, this act provides that it is "relating to inspection of hotels, inns, and boarding houses, by adding a new section thereto, to be known and numbered as Section 13084-A, relating to the same subject; providing for the inspection and regulation by the State

Board of Health of tourist camps, cabins or resorts maintained or advertised for public use; \* \* \* \*"

I will endeavor to cite you a few definitions which I have found of this term, "public use," and in that manner we will be able to ascertain whether or not camps which you have designated in your letter are to be governed by this provision:

"The essential feature of a 'public use' is that it is not confined to privileged individuals but is open to the indefinite public and it is this indefiniteness or unrestricted quality that gives it its public character."

--Power Company v. P. S. C., 100  
Pac. (2d) 571, 1. c. 573, 98  
Utah 406.

"The test whether a use is a 'public use' within Constitution of 1902, Section 1083 (Code 1904), page CCIXVII, exempting from taxation certain property devoted to a public use, is whether a public trust is imposed upon the property, whether the public has a legal right to the use which cannot be gainsaid or denied or withdrawn by the owner."

--Commonwealth v. The City of Richmond, 81 S. E. 69, 74, 116 Va. 69,  
L. R. A. 1915A, 1118.

"To constitute 'public use' all persons must have equal right to use utility and it must be in common and on same terms however few in number avail themselves of it."

--Palmyra Telephone Co. v. The Modesto Telephone Co., 167 N. E. 860, 862,  
336 Ill. 158.

"Essential feature of 'public use' is that it is not confined to privileged individuals

but open to the indefinite public. Development Company permitting persons to whom it sold lots and others to connect with water main constructed by its assignors, did not devote it to 'public use.'"

--Development Company v. P. S. C.,  
158 App. 869, 872, 306 Pa. 43.

"By 'public' or 'public use' is meant the people of the whole state."

--Northwestern Elevated Ry. Co. v.  
City of Chicago, 1 Ill. C. C. 480.

It would be possible to cite you many other authorities but the above will give a general idea of the definition of the term "public use," which seems to be rather general.

We note from your request that the agencies or organizations set out by you are Boy Scouts, Girl Scouts, YMCA, YWCA, YMHA, Rotary Clubs and Kiwanis Clubs. It is a matter of general knowledge that in order to enjoy the recreational facilities of these various organizations, it is necessary that one either be a member thereof or that they be selected by the membership of such organizations and that such facilities and privileges are not open to the general public. Therefore, applying the rules as set out in the citations above, it can be seen that these recreational centers and resorts are not maintained or advertised for "public use."

#### Conclusion

Therefore, it is the opinion of this Department that the organizations as set out in the last paragraph of your request of October 19, 1942, are not subject to Article

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6, Chapter 58, R. S. Mo. 1939, regardless of whether or not  
a fee is paid.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General.

APPROVED:

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ROY MCKITTRICK  
Attorney-General

JSP:EG