

HEALTH, STATE BOARD OF:
OPERATION OF HOSPITAL:

State Board of Health may operate
hospital for Federal Government when
all funds are furnished by the Federal
Government.

July 13, 1943



Dr. James Stewart
State Health Commissioner
State Board of Health
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein
you submit the following statement and request:

"The Federal Works Agency, through funds
granted by the Lanham Act, has suggested
that funds would be available to build
or to reconstruct an existing school
building in Waynesville into a general
hospital facility and on completion of
same the hospital and equipment would
be assigned to the State Board of Health
for operation."

"In view of this proposal I would like
to have an opinion from your office re-
garding the following question:

"Has the State Board of Health authority
to operate a general hospital when all
funds to be used in the operation and
maintenance of such institution are
granted to the State Board of Health
by an agency of the Federal Government."

The duties of the State Board of Health, which is set
up under the provisions of Chapter 57 R. S. Mo. 1939, are
prescribed under Section 9735 of that Chapter. This section
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 representatives shall be paid by the state as provided in this chapter for expenses of the members of the state board of health."

As a general rule, officers and agents of the state derive their authority from the Constitution or statutes creating such office or agency. In addition to the powers granted under Section 9735, supra, the General Assembly in Laws Mo. 1941 at page 370 amended said Section 9735 by adding Section 9735a which related to the duties of the State Board of Health with respect to cooperating with the Federal Government in the Public Health Service. This section reads as follows:

"The State Board of Health is hereby directed to comply with the provisions of any act of Congress providing for the distribution and expenditure of funds of the United States appropriated by Congress for health purposes and to comply with any of the rules or conditions made by the United States Public Health Service. The Children's Bureau or any other Federal agency in regard to health funds distributed to the states, and to comply with any of the rules and conditions made by said services or bureaus or other branches of the United States Government acting under the provisions of the Federal law in order to secure for the State of Missouri funds allotted to this state by the United States Government or (for) health purposes under the provisions of such acts of Congress, relating to health; said funds shall be received by the State Treasurer and deposited in separate funds to be known as the United States Public Health

Title VI fund, the Venereal Disease Control fund, the Children's Bureau fund, and any other fund specially designated by a Federal Agency for the use of the State Board of Health for health purposes, and to be paid out by the State Treasurer on requisitions drawn by the executive officers of the State Board of Health on a warrant of the State Auditor. Said funds being allotted to the State of Missouri for health purposes by the Federal Government the General Assembly shall appropriate the same to the use of the State Board of Health, under such provisions as are set out for the reception and use of funds by the Federal Government."

By the first sentence of this section, it seems that the General assembly had in mind such a contingency as you have related in your request. In the case of *In re Lenski v. O'Brien*, 207 Mo. Appeal 224, 229, a principle is announced and applied which we think is applicable here. It relates to the authority of a state agency to execute a duty imposed by an act of Congress. The principle is as follows:

"***** That authority to enforce a Federal statute, or to execute a duty imposed under an act of Congress may be conferred upon State officers as such, and that such officer may execute the same unless prohibited by the constitution or statutes of the State is no longer open to question. (*Priggs v. Pennsylvania*, 16 Pet. 539, l.c. 622; *Robertson v. Baldwin*, 165 U. S. 275; *Dallemagne v. Moisan*, 197 U. S. 169, l.c. 174.)*****"

The 61st General Assembly appropriated the Federal funds in accordance with the provisions of 1935a, supra, Laws Mo. 1941, pp. 220, 221.

Dr. James Stewart

-4-

July 13, 1943

CONCLUSION.

From the foregoing, it is the opinion of this department that the State Board of Health would be acting within the scope of its authority to operate a general hospital when all funds to be used in the operation and maintenance of such institution are granted to the State Board of Health by an agency of the Federal Government.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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