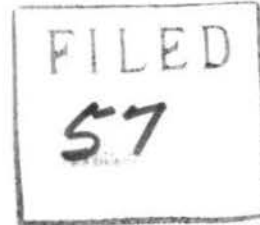


PUBLIC HEALTH AND WELFARE: Final administrative authority
CANCER COMMISSION: of Cancer Hospital is Director
of the Department.

3-10-48

Honorable Samuel Marsh, Director
Department of Public Health & Welfare
State Office Building
Jefferson City, Missouri



Dear Mr. Marsh:

This is in reply to your request for an opinion concerning the administration of the Ellis Fischel Cancer Hospital at Columbia, Missouri.

As we understand your request, the principal question which you desire to have answered is "Who is the final administrative authority in the operation of this State institution."

The State Cancer Hospital was established by the Cancer Commission under the authority contained in Chapter 125, R.S. 1939. Since the establishment of this hospital it has been operated and maintained by the Cancer Commission under the authority of that same chapter. In 1945 the General Assembly enacted legislation known as Senate Bill No. 349 which established the Department of Public Health and Welfare. "The scope and purpose of the department of public health and welfare shall be to improve and protect the health of the people of the State of Missouri; to care for the mentally ill and those who are ill from other causes, so far as the laws of Missouri shall provide; to provide care and maintenance for certain other persons, as provided by law; to administer laws concerning social welfare, including certain social security laws." (Laws of Missouri, 1945, page 946.) Said Senate Bill No. 349 then proceeds to establish this Department by organizing under one head the various institutions and agencies dealing with the public health and welfare. The bill provides that "The department of public health and welfare shall be controlled and administered by a director of public health and welfare." The bill further provides that the Department shall be composed of three divisions, namely, the Division of Health, the Division of Mental Diseases and the Division of Welfare. The divisions are placed under the supervision and direction of a Division Director appointed by the

Governor, by and with the advice and consent of the Senate. Section 6 of Senate Bill No. 349, Laws of Missouri, 1945, page 947, provides:

**** Each division director shall, subject to the supervision of the director of the department, be the chief administrative officer of his division respectively. Each division director shall appoint, subject to the approval of the director of the department, all employees in his division and may discharge, subject to the approval of the director of the department, such employees after proper hearing: Provided, such employment and discharge conform to practices governing selection of employees in the department of public health and welfare."

Section 13 of the bill contains the following provision:

**** The cancer commission of the State of Missouri, as established by Chapter 125, Revised Statutes of Missouri, 1939, as amended, is hereby assigned to the division of health in the department of public health and welfare."

It should be noted that Section 13 does not abolish the Cancer Commission, but assigns the Commission to the Division of Health. The real problem involved in your request is concerned with the extent of the authority of the Cancer Commission as distinct from the authority of the Department and the Division of Health.

It is a general rule of law that in construing statutes courts must ascertain and give effect to the purposes of the Legislature, and courts must keep in mind the furtherance of the purpose sought thereby. State ex rel. Kenney v. Missouri Workmen's Compensation Commission, 40 S.W. (2d) 503, 225 Mo.App. 501.

In 1945 the General Assembly, following the mandate of Section 12, Article IV of the Constitution of 1945, assembled together the various branches of the Executive Department and lodged in executive heads of the departments the duty and responsibility of the efficient exercise of their functions. When practicable, they placed broad general powers in these departmental executives so that they could coordinate the activities

within the department which related to the same general subject matter.

Senate Bill No. 349 vested broad powers in the Director of the Department and the directors of the respective divisions to administer the laws pertaining to the public health and welfare of the people of the State of Missouri. The bill assigned the Cancer Commission to the Division of Health without any restrictive provisos to the general authority granted the Director. All of the state institutions for the care of the mentally and physically ill and the aged were placed under the control and supervision of the Department. We believe that the Legislature intended that the Cancer Hospital at Columbia should also be a part of this Department so that all the agencies and institutions concerned with public health and welfare would be under one executive head. We think it would be inconsistent with logic and reason to hold that the Legislature intended that this one hospital should be divorced from the control and supervision of the very Department established for the furtherance of the public health and welfare of the State of Missouri.

We further believe it significant that during the reorganization program certain boards, bureaus and agencies were assigned to departments, but in the legislation providing for these assignments it was further provided that the executive heads of the respective divisions should have no control over their activities, as witness the following:

Laws of Missouri, 1945, page 737.

"The board of probation and parole shall be a division of the department of corrections, but shall not be subject to orders of the director of said department and shall only have such relationship with the department as is set out in this act."
(Underscoring ours.)

Laws of Missouri, 1945, page 1806.

"There is hereby created within the State Department of Revenue a commission to be known and designated as the State Tax Commission. The Director of Revenue shall have no supervision, authority or control over such actions or decisions of the State Tax Commission as relates to its duties prescribed by law."
(Underscoring ours.)

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In Senate Bill No. 456, Laws of Missouri, 1945, page 1701, the Legislature created and established a division of the State Department of Education to be known as the Division of Registration and Examination. It assigned various licensing boards to this division but provided that the authority of the boards should remain distinct and separate and not subject to the control of the Department of Education.

Laws of Missouri, 1945, page 1701.

"Each board herein mentioned shall function under such statutes, rules and regulations that now exist which govern each respective board, and nothing herein contained shall be construed to deprive any of the above boards from exercising such right or authority as each board now has at this time."

Inasmuch as there are no modifying or excepting provisions, we believe that the Cancer Commission has become as much a part of the Department of Public Health and Welfare as other State health institutions and thus is subject to the supervision of the Director of the Division of Health and ultimately the Director of the Department of Public Health and Welfare.

Conclusion.

It is the opinion of this department that the final administrative authority of the State Cancer Hospital at Columbia, Missouri, is in the Director of the Department of Public Health and Welfare and the immediate supervision of the Cancer Commission is in the Director of the Division of Health within that Department.

Respectfully submitted,

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APPROVED:

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