

HEALTH, DIVISION OF:

Members of State Hospital Advisory
Council serve until successors
appointed.

February 18, 1949



Dr. John W. Williams, Jr.
Director, Local Health and
Hospital Administration
Division of Health
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this
department, which request is as follows:

"A question has arisen regarding status
of the State Hospital Advisory Council
created by the 1945 Legislature and found
on page 972, Laws of Missouri, 1945.
Public Law 725, 79th Congress, Section
612, A(2), requires a state to have a
State Advisory Council in its administra-
tion of this law.

"The question now arises for which we
would like to have an opinion.

"Does the present State Advisory Council
carry over or did the present law expire
at the end of the two years for which
the members of the Council were appointed?

"Failure of the state to comply with the
Federal Law would jeopardize our whole
hospital construction program."

The State Advisory Council was created by an act of the
63rd General Assembly, Laws of 1945, page 972. Section 2 of
that act provides:

"There is hereby created a State Advisory
Council of seven members, who shall be

appointed by the governor by and with the advise and consent of the Senate. Each member of the State Advisory Council shall serve for a term of two years from and after his or her appointment and confirmation. Said Advisory Council shall be composed of citizens of this state who have resided in this state not less than five years immediately prior to their appointment and shall include at least two representatives of the consumers of hospital service, with the other members representing state government and non-government organizations in the state which are familiar with the needs of health services in urban and rural areas of the state. The members of this council may not receive any compensation other than for actual travel and subsistence when acting officially as members of the Advisory Council. The Advisory Council shall be empowered to consult with the Division of Health on the official State Plan for the construction of additional hospital and health center facilities. The Director of Health will approve such applications for federal assistance in the construction of hospitals and health centers as may be considered advisable after consultation with the Advisory Council."

Section 4 of the act declares an emergency, as follows:

"Since the Division of Health of the Department of Public Health and Welfare is established by this Act as the official State Agency to receive Federal grants and aids, and since it is necessary to create a state Advisory Council to comply with enacted Federal legislation, an emergency is declared to exist under the provisions of the Constitution and this Act shall be in full force and effect from and after its passage and approval."

The act was approved on October 17, 1946, and became effective on that date.

The Federal legislation referred to in the emergency clause is the "Hospital Survey and Construction Act of 1946." (42 U. S. C. A., Section 291 to 291m.) The purposes of that act are set out as follows (42 U. S. C. A., Section 291):

"The purpose of this subchapter is to assist the several States --

(a) to inventory their existing hospitals (as defined in section 291i (e) of this title), to survey the need for construction of hospitals, and to develop programs for construction of such public and other nonprofit hospitals as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic, and similar services to all their people; and

(b) to construct public and other nonprofit hospitals in accordance with such programs."

Section 291a authorizes the appropriation of \$3,000,000 to carry out the purposes of Section 291(a).

Section 291b provides that a state application for funds for the purpose of carrying out the purposes of Section 291(a) must provide, among other things, for the designation of a State Advisory Council to consult with a designated state agency (in Missouri the Division of Health of the Department of Public Health and Welfare, Laws of 1945, page 972, Section 1).

Section 291c provides that, upon approval of a state's application, funds shall be allotted in order to carry out the purposes of Section 291(a).

Section 291d authorizes, for the fiscal year ending June 30, 1947, and each of the four succeeding fiscal years, the appropriation of \$75,000,000 to assist the states in carrying out the purposes of Section 291(b), supra.

Section 291f provides for the submission by a state of a plan for carrying out the purposes of Section 291(b). The plan is required to designate a single state agency as the agency for the administration of the plan, and is required

to "provide for the designation of a State advisory council which shall include representatives of nongovernment organizations or groups, and of State agencies, concerned with the operation, construction, or utilization of hospitals, including representatives of the consumers of hospital services selected from among persons familiar with the need for such services in urban or rural areas, to consult with the State agency in carrying out such plans."

Section 291g provides for allotments of funds to states for which a state plan has been approved, and Section 291h provides for approval of projects by the Surgeon General and allocation of funds therefor.

Section 291j provides for the withholding of certification by the Surgeon General whenever he finds that "the State agency is not complying substantially with the provisions required by section 291f (a)," which section contains the requirement of an Advisory Council in carrying out the state plan.

The obvious purpose of the Missouri Legislature in enacting the legislation referred to above was to enable the State of Missouri to participate in the federally assisted hospital construction program provided for by the Hospital Survey and Construction Act of 1946. That act, by its terms, shows that a program is contemplated of at least five year's duration, appropriations being authorized up to the fiscal year ending June 30, 1951 (42 U. S. C. A., Section 291d). In view of such fact, to construe the Missouri statute to mean that the Council appointed thereunder expired automatically at the end of the two year term would be contrary to the intent and purpose of the Legislature.

"It is fundamental that in the construction of statutes the courts should so interpret them as to conform with the intent of the lawmaking power that enacted them." (State ex inf. Williams, 222 Mo. 268, 1.c. 283.) "Laws must be given a reasonable construction, keeping in view the purposes of, as well as the circumstances surrounding, their enactment." (Ibid., 1.c. 284.)

The act in question made no express provision for the original members of the Council holding over until their successors were appointed and qualified. However, Section 12 of Article VII of the Constitution, 1945, provides that,

except as required by the Constitution, "all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified." Section 12820, R. S. Mo. 1939, contains a provision to the same effect. See also Langston v. Howard County, 336 Mo. 444, 79 S. W. (2d) 99.

CONCLUSION

Therefore, it is the opinion of this department that the members of the State Hospital Advisory Council appointed pursuant to Section 3, Laws of Missouri, 1945, page 972, continue to serve after the expiration of the two year term for which they were appointed and until their successors are appointed and qualified.

Respectfully submitted,

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APPROVED:

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