

COUNTIES: The county court of a third-class county does
COUNTY COURTS: not have authority to appoint a rabies control
RABIES: officer or to authorize the county health center
HEALTH: trustees to do so. Without authority for appoint-
 ing such rabies control officer public funds may
 not be used to pay the salary of any such officer.

July 13, 1960

Honorable William B. Milfelt
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri



Dear Mr. Milfelt:

You have recently requested from this office an opinion concerning the authority of the county court to appoint and pay a rabies control officer and, in this connection, you have asked the following questions:

"Does the County Court of Jefferson County have the authority to order the Trustees of the Jefferson County Health Department to appoint a Rabies Control Officer.

"Does the County Court have the authority to order the Trustees of the Jefferson County Health Department to pay the salary of such Rabies Control Officer from the funds of the Health Department.

"Do the Trustees of the Jefferson County Health Department have the authority to appoint a Rabies Control Officer to conduct the duties as contained in their suggested draft heretofore recited, said officer to operate in the whole of Jefferson County, excepting incorporated areas.

"Do the Trustees of the Jefferson County Health Department have the authority to pay the salary of such Rabies Control Officer appointed by said Trustees from Health Department funds."

Although your request for this opinion refers to the "County Department of Health," there is no statutory authority for such a department in a county of the third class, and it

Honorable William B. Milfelt

is assumed that this title is a misnomer. Inquiry of the State Department of Health has revealed that your reference is probably to the trustees of the county health center. We are writing this opinion on the basis of the assumption that this is correct and will refer to the "Trustees of the County Health Center" rather than to the "County Health Department." Since there is no statutory authority for a "County Health Department," such department could, of course, have no powers or duties in this matter.

It appears that the county court of Jefferson County has heretofore issued a quarantine order because of the prevalence of rabies in the county. It is presumed that this action was taken pursuant to the provisions of Section 322.050, RSMo 1957 Supplement. The statutes provide, by Section 322.060, that such quarantine order shall be enforced by all police officers, town marshals and constables. Section 322.070 provides that all expenses of the quarantine shall be paid out of public funds. It is specifically provided that the police officers, town marshals and constables shall receive for their duties in this respect "such fees and mileage as is provided by law for the performance of their other like duties."

Thus, the statutes have specified the officers whose duty it is to enforce such quarantine order and, likewise, has provided the method of compensating such officers for the performance of such duties. Therefore, in the absence of any authority conferred upon them by statute, the county court does not have authority to appoint a rabies control officer or to authorize the county health center trustees to appoint such officer. Likewise, without statutory authority for the payment of compensation of such rabies control officer the county court does not have authority to pay or to authorize the payment of compensation or expenses to such officer.

This result follows even more forcibly where the statute has specifically provided for the enforcement of such quarantine order and for the compensation of the officers whose duties it is to enforce such order.

As is pointed out above, the county court acts in promulgating the quarantine order and the duty of enforcement falls upon the police, town marshals and constables. Under such

Honorable William B. Milfelt

circumstances the county health center trustees have no function in the field, and they are clearly without authority to appoint a rabies control officer or to use any funds in their hands to pay said officer.

9

The statutes do not give any authority to the county court of a third-class county to promulgate regulations or instructions for the enforcement of the quarantine order. In such circumstances the county court is without authority to promulgate the proposed "instructions" to the rabies control officer. The Legislature has not seen fit to authorize the creation of a county dog pound or to require the payment of fees by the dog owner when such dog is impounded by a third-class county. When such a system was desired, it was provided for by the Legislature for counties of the first class, by Sections 322.090 et seq., RSMo 1949. Consequently, Jefferson County is without authority to create such a dog pound or to impose such liability on dog owners.

The method of enforcement of the quarantine order is provided for by statute, and neither the county court nor the county health center trustees have power to legislate in this field.

CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that the county court of a third-class county does not have authority to appoint a rabies control officer or to authorize the county health center trustees to do so. Without authority for appointing such rabies control officer public funds may not be used to pay the salary of any such officer.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Very truly yours,

John M. Dalton
Attorney General

FLH:ic:gm