

COUNTY COURT: There is no power in a county of the third
COUNTY SANITARIAN: class to create the office of county
sanitarian to inspect and enforce rules
regarding eating establishments and milk
production facilities. If there is a duly
appointed county health officer, he may employ personnel to
assist him in gathering information upon which he can act whether
he designates such person as county sanitarian or by some other
name.

July 19, 1961

Honorable Stephen E. Strom
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri



Dear Mr. Strom:

Your recent request for an official opinion reads:

"The County Court of Cape Girardeau County is of the opinion that it would be advantageous to have a system of health inspection within the county, including in particular an inspection of the milk producing facilities within the county. The county has no Health Unit. Upon request of the County Court, I have examined the statutes to determine whether or not it is possible to carry out such a procedure that the County Court desires, and I have been unable to find any particular authority for such a program, with the exception of the Missouri Dairy Law as enforced by the State Commissioner of Agriculture. Apparently, the Department of Agriculture has not inaugurated a system for making the inspections which are provided by the statute.

"The County Court has requested that I seek your opinion concerning whether or not it is permissible for the county to allocate funds for the payment of the salary of a 'county Sanitarian'. I have raised the question with the County Court concerning the basis for the duties of such a person and whether or not he would have any authority to enforce his recommendations or orders.

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"In the past, the county has contributed funds for the payment of such a person, with the remainder of the fund being contributed partially by the City of Cape Girardeau (which has its own milk inspection law) and partially by some of the dairies themselves. The arrangement has come up for renewal and when my advice was sought concerning the matter, I attempted to check the statutes with reference to the same and can find no authority therefor. However, on the other hand, the county auditors have approved the county contribution in the past and the sanitarian had been in contact with various state health authorities with reference to his qualifications under the 'merit system', etc. Apparently there has never been an incident arise where the question of his authority has been involved.

"In short, the whole question resolves itself into what measures the County Court can take to see that the Missouri Dairy Law is enforced in the county and whether other sanitary requirements with reference to county eating establishments, etc., can be enforced, including the question of the allocation of funds for payment of salaries."

Several sections of the RSMo 1959 appear to be applicable to the problem here involved. Section 196.535 provides that the Commissioner of Agriculture shall administer the Missouri Dairy Law and provide for inspections of the dairy industry. Section 196.555 authorizes the commissioner to prescribe regulations to effectuate the enforcement of the laws relating to dairies. Section 71.720 is very closely related to the above two sections. It is the so-called "local option" provision permitting cities and towns, by ordinance, to license and regulate milk dairies and the sale of milk and provide for inspections. The above sections are complementary of each other and in actual practice have provided for a loosely wedded interlocking system of milk and dairy inspection in this state.

Section 192.020 charges the Division of Health of Missouri with the responsibility of safeguarding the health of the people of this state. Section 192.080 provides that, "all

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powers and duties pertaining to food and drugs shall be exercised by the division of health." Section 196.190 requires sanitation in establishments handling food. Section 196.230 provides for abatement of violations by, "the director of the division of health and his assistants or agents by him appointed, the state, county, city and town health officers"

Section 205.010 sets out the method of establishing county health centers. Section 205.050 provides that the public health center is, "established, maintained and operated for the improvement of health of all inhabitants of said county or counties." Section 205.100 provides that the county court in February of each year shall "appoint the director of the public health center as county health officer and such county health officer shall exercise all of the rights and perform all of the duties pertaining to that office as set forward under the health laws of the state and rules and regulations of the division of health of the department of public health and welfare."

Your first question involves the authority of the county court to create the office or position of "county sanitarian" for the purpose of providing for inspection of milk producing facilities in Cape Girardeau County. As above indicated the state legislature has delegated the responsibility for enforcing the Missouri Dairy Law to the Commissioner of Agriculture and to local municipalities. The statutes do not authorize the county court of a third class county to promulgate regulations and administer the dairy laws of this state. When such a delegation of authority was desired, it was provided for by the legislature for counties of the first class, by Section 192.300, RSMo 1959.

Both in connection with the above question and the other question involved in this case, namely, whether the county court can hire a "county sanitarian" to provide for inspection of eating establishments, it is important to keep in mind that the county has not seen fit to organize a "county health center" or hire a qualified county health officer insofar as we have been able to ascertain. Chapters 205 and 192 specifically spell out the methods for adopting county health units and employing county health officers and states that such units are authorized for the purpose of "improvement of health of all inhabitants of said county" Here the legislature has spelled out methods of meeting local health problems on a local basis. Now we come to the question of whether the methods enumerated by the legislature are exclusive or whether the county court can go off on a tangent of its own. The Supreme Court of Missouri in the case of Kroger Grocery & Baking Co. v. City of St. Louis, 106 S.W. 2d 439, states:

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". . . when special powers are conferred, or special methods are prescribed for the exercise of a power, the exercise of such power is within the maxim expressio unius est exclusio alterius, and forbids and renders nugatory the doing of the thing specified, except in the particular way pointed out."

We are of the opinion that where a county health officer is appointed under provisions of Section 192.260 or where, under the provisions of Section 205.100, the head of the county health center is ex officio county health officer, the county health officer has power to make the inspection of milk producing facilities and also of eating establishments. In the absence of existence of a county health officer, the county has no power to create the office of "county sanitarian" for the purpose of inspection of milk producing facilities and eating establishments. Where there is a county health officer, and he appoints someone whom he calls a county sanitarian to act for him, then the sanitarian is merely an employee of the health officer. Under this arrangement the sanitarian would gather facts and report them to the health officer and the health officer would take whatever action necessary to enforce the state statutes and regulations promulgated by the Department of Health.

CONCLUSION

Therefore it is our conclusion that there is no power in a county of the third class to create the office of county sanitarian to inspect and enforce rules regarding eating establishments and milk production facilities. If there is a duly appointed county health officer, he may employ personnel to assist him in gathering information upon which he can act whether he designates such person as county sanitarian or by some other name.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Clyde Burch.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

CB:gm