



July 24, 1961

Honorable Robert P. Weatherford, Jr.
City Manager
29th Floor City Hall
Kansas City 6, Missouri

Dear Mr. Weatherford:

In re: Unlicensed Nursing Homes in
Kansas City

In recent months, both this office and the Division of Health have received numerous inquiries concerning the operation of unlicensed nursing homes in the City of Kansas City. As a result of these inquiries, we have reviewed the nursing home laws of Missouri. The purpose of this letter is to set out some of the general conclusions reached as a result of this review.

In 1957, the legislature enacted a new Nursing Home Act which is found in Chapter 198 of our statutes.

Sec. 198.021 reads as follows: License to operate home required

After ninety days from the date this law becomes effective, or at the expiration of any license issued under a prior law, no person shall establish, conduct or maintain a nursing, convalescent or boarding home in this state without a license issued under this law by the division of health of the department of public health and welfare.

This section makes illegal the operation of an unlicensed nursing home.

In order to enforce this section and "make a case" against an illegal operator, the Division of Health must have the right to inspect the premises in question so as to determine if in fact the place is being run as a nursing home.

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Sec. 198.062 reads as follows: Homes open to inspection, when

"Every home conducted by a licensee hereunder, and any premises proposed to be operated by an applicant for a license, shall be open at all reasonable times to inspection by the division of health and by any official designated by the division of health as provided in section 198.051."

Under this section, the inspection powers of the Division of Health are quite limited. The division is given the right to inspect only (a) licensed homes and (b) homes which apply for a license. The Division is not given the right to inspect unlicensed homes.

At the time the 1957 Nursing Home Act was being considered by the General Assembly, an effort was made to provide adequate inspection provisions so that all of the bill's provisions could be enforced. Efforts were made to broaden the scope of Sec. 198.062. These efforts were successfully opposed by those who felt that to broaden Sec. 198.062 would place too great a power in the hands of the Division of Health and would be a threat to our constitutionally guaranteed right of privacy and our right to be secure against unreasonable searches and seizures.

Thus, unlicensed or "bootleg" nursing homes can only be inspected under the most unlikely circumstance that the bootleg operator will voluntarily permit an inspection. Without the legal right to inspect, the Division of Health is hamstrung as far as the practical enforcement of the Act is concerned.

As we see it, there are only two ways in which the nursing home law provisions can be given the full effect originally intended. One way would be for the state legislature to revise and broaden the inspection powers provided in Section 198.062. The other method would be for the city of Kansas City to enact or re-enact ordinances consistent with our state statutes and thereby assist in the implementation of these statutes. In *City of St. Louis v. Evans*, 337 S.W.2d 948, the Missouri Supreme Court upheld the right of city inspectors to enter premises and inspect for the violation of ordinances. The court at p. 957 stated:

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"The constitutional provisions relied upon by respondents do not prohibit reasonable entry and inspection of premises used for the purposes for which the respondents' premises were used for when entry of such premises is sought for the purpose of administering ordinances relating to public health, safety and welfare, nor do they prohibit an inspection, such as was sought under the facts attendant to the second charge against each defendant. Nor is there any merit in respondents' contention that the city had no authority to enact Section 36 upon which the second charges are based."

It is our understanding that when the state legislature passed the Nursing Home Act, the city of Kansas City caused to be inactivated Chapter 28 of the city's ordinances pertaining to the operation of boarding and nursing homes within the city limits of Kansas City.

With the state law ineffective because of inadequate inspection provisions and with no city ordinances on the books, "bootleg" nursing homes can have a field day in Kansas City. This creates a serious threat to the health, welfare, and safety of the citizens of Kansas City which threat cannot be quickly eliminated by state action because the legislature will not meet again until January, 1963. Thus, any immediate remedial action will have to be taken by the City Council of Kansas City.

I strongly recommend that you and the Council consider whether the situation in Kansas City with respect to "bootleg" nursing homes is of sufficient seriousness and sufficient potential danger so as to require legislative action on the local level. If you should desire, our office would be only too happy to render any assistance deemed necessary to assist you or the City Counselor's office in drafting proper ordinances relating to this matter.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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cc: Dr. Hardwicke
Keith Wilson