

COUNTIES:
OFFICERS:
COUNTY COURTS:
COUNTY HEALTH OFFICER:
COUNTY HEALTH CENTER:

In those counties which have a county health center, the county court should appoint the director of the public health center as the county health officer.

August 12, 1963

Opinion No. 306

Honorable Paul Boone
Prosecuting Attorney
Ozark County
Gainesville, Missouri



Dear Mr. Boone:

This is in reply to your letter of July 23, 1963, requesting an opinion from this office. Your letter reads as follows:

"I would like your opinion concerning two separate sections of the Missouri statutes concerning a county health officer.

"Section 192.260 RS Mo 1959 provides:

"The County courts of the several counties of this state may appoint a duly licensed qualified physician as a county health officer for a term of one year, and in the event a vacancy is created in the office of the county health officer, such court may appoint a duly licensed qualified physician for the unexpired term. If the county court of any county decides to appoint a county health officer as empowered in this law, it shall agree with the officer as to the compensation and expenses to be paid for such service, which amount shall be paid out of the county treasury of the county. Nothing contained herein shall be construed to require the county court of any county to appoint a county health officer in any county."

"Section 205.100 RS Mo. 1959 provides:

"The county court or courts shall annually at their February meeting, 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."

"It appears to me the two statutes in conflict, in that the first section appears to be directory, and the second appears to be mandatory with the further provision that the director of the public health center of the county be appointed. Our county does have a county health center."

"Would you give me your opinion concerning the apparent conflict, and which of the statutes should our county court use in considering the appointment of a county health officer?"

Section 205.100, RSMo 1959, quoted in your letter, was originally enacted in 1945 and is found in substantially its present form in Laws of 1945, page 969, House Bill 280, Section 7. The 1949 revision changed the designation of the office from "deputy health commissioner" to "county health officer."

Section 192.260, RSMo 1959, is of more ancient vintage. Former revisions of this law date back to Section 5421 of the revision of 1889. As amended in Laws of 1919, page 373, the law provided that the county court "shall" appoint a deputy state commissioner of health. In Laws of 1933, page 271, the law was changed to provide that the county court "may" appoint a deputy state commissioner of health. The 1945 Act rephrased the section without substantially changing its meaning. The 1949 revision act designated the appointees as county health officers rather than deputy state commissioners of health.

In 82 C.J.S., Statutes, Sections 366, 368 and 369, is given the general rules of statutory construction which we quote as follows:

82 C.J.S., page 801. "Statutes which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose are in *pari materia*. * * * Under the so-called '*pari materia*' rule of construction, it is well established that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or all statutes having the same general purpose, that is, statutes which are in *pari materia*, should be read in connection with it; and such related statutes may or should be construed together as though they constituted one law, that is, they must be construed as one system, and governed by one spirit and policy, and the legislative intention must be ascertained, not alone from the literal meaning of the words of a statute, but from a view of the whole system of which it is but a part. This rule of construction applies although the statutes to be construed together were enacted at different times, and contain no reference to one another; and it is immaterial that the statutes are found in different chapters of the revised statutes and under different headings."

82 C.J.S., page 810. "The court must harmonize statutes relating to the same subject, if possible, and give effect to each, that is, all applicable laws on the same subject matter should be construed together so as to produce a harmonious system or body of legislation, if possible."

82 C.J.S., Section 368, page 836. "Statutes in *pari materia*, although in apparent conflict, or containing apparent inconsistencies, should, as far as reasonably possible, be construed in harmony with each

other, so as to give force and effect to each; but, if there is an unreconcilable conflict, the latest enactment will control, or will be regarded as an exception to, or qualification of, the prior statute."

82 C.J.S., Section 369, page 839. "General and special statutes should be read together and harmonized, if possible; but, to the extent of any necessary repugnancy between them, the special statute will prevail over the general unless it appears that the legislature intended to make the general act controlling."

In State ex rel. Peck Company v. Brown, 105 SW2d 909, 1.c. 911-912, it is stated:

"In construing statutes in pari materia, 'endeavor should be made, by tracing history of legislation on the subject, to ascertain the uniform and consistent purpose of the Legislature or to discover how the policy of the Legislature with reference to the subject matter has been changed or modified from time to time. With this purpose in view therefore it is proper to consider, not only acts passed at the same session of the Legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed. So far as reasonably possible the statutes, although seemingly in conflict with each other, should be harmonized, and force and effect given to each, as it will not be presumed that the Legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so in express terms, nor will it be presumed that the Legislature intended to leave on the statute books two contradictory enactments.' 16 Cyc. 1147. We approved the above excerpt in State ex rel. Columbia National Bank v. Davis, 314 Mo. 373, 284 S.W. 464."

Following these general rules of statutory construction, it is our opinion that Section 192.260 and 205.100 should be read and construed together. They should be harmonized, if possible. It is apparent that Section 192.260 is a general statute and is permissive in nature. It provides that the county court "may" appoint a county health officer. This statute is applicable to all counties in Missouri regardless of whether there is a county health center in the county.

On the other hand, Section 205.100 is of more restricted application. It would apply only to those counties where there is a public health center and a director thereof. Where there is a director of the public health center in a county, Section 205.100 provides that the county court shall appoint such director as county health officer.

We are of the opinion that the two statutes can be harmonized, and that effect can be given to each of them. In your letter, you state that Ozark County does have a county health center. This being so, the provisions of Section 205.100 should be applied and the director of the public health center should be appointed as county health officer. When so considered and construed there is no conflict between the two statutes and they are thus in harmony with one another.

CONCLUSION

It is therefore the opinion of this office that there is no conflict between Sections 192.260 and 205.100, RSMo 1959, and that they should be construed together and harmonized and effect given to each of them. We are further of the opinion that the director of the public health center should be appointed as county health officer in those counties which have a county health center, in accordance with Section 205.100, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Wayne W. Waldo.

Yours very truly,

THOMAS F. EAGLETON
Attorney General