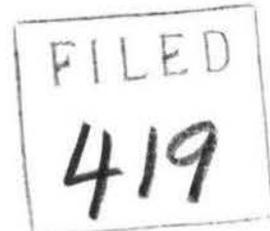


December 29, 1965

Answered By Letter
(Ashby)

Opinion No. 419

Honorable Earl R. Blackwell
Senator of 22nd District of Missouri
Hillsboro, Missouri



Dear Senator Blackwell:

This letter is in response to your request for an opinion defining the authority, if any, of the Director of the Jefferson County Health Department, to prepare regulations on rabies control under Section 322.100 RSMo and submit them to the county court.

Jefferson County came within the ambit of Sections 322.090 through 322.130 RSMo by reason of an amendment to 322.120 RSMo Cum. Supp. 1965. Sections 322.090 and 322.100, authorize the county court to issue regulations on rabies control and refer therein to the "County Health Commissioner". Section 322.100, imposes the duties upon this officer to prepare the proposed regulations; hold hearings thereon and submit his regulations to the county court.

Dr. Carl Rice of Hillsboro, advised a member of this office that he is the Director of the Jefferson County Health Center, and serves as the "County Health Officer". (See Section 192.260 and 205.100 RSMo).

Section 205.100 RSMo reads as follows:

"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

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and regulations of the division of health
of the department of public health and
welfare."

(Underscoring Added)

Attention is directed to the broad scope of responsibility indicated by the underscored part of the above statute.

Statutes relating to the same subject matter must be considered together, even though, the statutes are found in different chapters and were enacted at different times. (State ex rel Smithco Transport Co. v. Public Service Commission 316 S.W. 2d 6, 1.c. 13). The court in this case cited 82 C.J.S. "Statutes" Section 366, Page 801.

In State ex rel Peck Company v. Brown, 105 S.W. 2d 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."

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Section 205.100 RSMo 1959, was originally enacted in 1945, (L. 1945, p. 969 House Bill No. 280 Section 7) and used the term "deputy health commissioner." The 1949 revision changed the designation of this position to "county health officer."

Section 192.260 has its genesis, according to Verron's Annotated Missouri Statutes, in Laws of Missouri 1883 at p. 95, creating a state board of health, and in RSMo 1889, as Chapter 79. The county board of health composed of the county judges and a physician first appears in the revised statutes as Section 7529a, RSMo 1906. The RSMo perpetuate the state board of health and the county boards of health until 1919 where in L. 1919 p. 372, the term "deputy state commissioners" first appears. This term was also found in Section 5782 RSMo 1919, and successive revised statutes. According to the House and Senate Journals, 65 General Assembly, Volume III, Report on the Revision of Statutes, 1949, Missouri, at p. 544, Section 9855, RSMo 1939, abolished the office of state board of health and its powers and duties vested in the department of public health and welfare (L. 1945, p. 945, Section 13, 22 and 23). Where the term "state board of health" is used, the term "division of health" was to be substituted and understood. By the 1949 revision act (Senate Bill No. 1051), the position of deputy state commissioner of health was redesignated as the county health officer since the office of state commissioner of health no longer existed according to the comment made by the revisor of statutes found in 12 VAMS, p. 35-36, on Section 192.260 RSMo.

The term "county health commissioner" appears only in Sections 322.090 and 322.100 RSMo 1959, and remains on the statutes as it was originally enacted in 1943 (L. 1943, p. 327, Section 243). These sections were not modified or changed during the 1949 revision.

The statutes discussed above are considered to be in pari materia and even though amended, we feel they should be construed and harmonized together. As originally enacted and with the evolution of the law on these offices, the functions of the county health commissioner under Section 322.090 and 322.100, were performed by deputy health commissioner before 1949, and have been performed by county health officers since 1949, when

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the statutes were amended so as to provide for the appointment of county health officers instead of county health commissioners. We deem the terms, "deputy health commissioner" and "county health commissioner" to have identical functions under Sections 322.090 through 322.190. This interpretation equates the offices of the county health officer and county health commissioner so far as the duties imposed under Section 322.090 through 322.190, RSMo 1959, are concerned.

We thus conclude the office of County Health Officer of Jefferson County and County Health Commissioner as the term is applied to Jefferson County, are one and the same officer when executing those functions and duties imposed by Sections 322.090 through 322.190, RSMo 1959 (as amended).

Yours very truly,

NORMAN H. ANDERSON
Attorney General