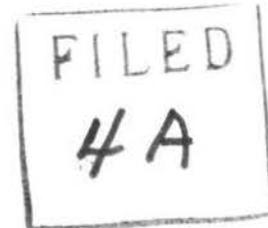


Answer by letter-Wood

February 22, 1971

OPINION LETTER NO. 4A



Honorable Joe D. Holt
Representative, District 102
Room 405, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Holt:

You have asked for our opinion on who is the proper "governing body" to adopt, modify or reject the written results of labor discussions arising out of proposals tendered by Local 1810, American Federation of State, County and Municipal Employees, AFL-CIO, in behalf of employees of the Ellis Fischel State Cancer Hospital pursuant to the Public Employee Labor Organization Law (Section 105.500, et seq., RSMo).

The State Cancer Commission is charged by law with the responsibility for making all rules and regulations for the conduct and discipline of the State Cancer Hospital, selecting and appointing the general medical staff of the hospital, and appointing an administrator for the hospital (Sections 200.020-200.040, RSMo). The administrator is in charge of the operation and conduct of the hospital and he is to employ nurses, attendants and other employees necessary to the administration of the hospital (Sections 200.020 and 200.050, RSMo).

The Cancer Commission has been assigned to the Division of Health in the Department of Public Health and Welfare (Section 192.010, RSMo). The State Board of Health has succeeded to all "statutory responsibilities of the Division of Health other than those of an administrative nature" (Section 191.410, RSMo). The Department of Public Health and Welfare, established pursuant to constitutional mandate (Article IV, Section 37, Constitution of Missouri, 1945) is composed of the Divisions of Health, Welfare and Mental Health (Section 191.010, RSMo). The department is controlled and administered by the director of the Department of Public Health and Welfare (Section 191.020, RSMo). The director of

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each of the three divisions within the department is, subject to the supervision of the director of the department, the chief administrative officer of his division, and each division director may appoint and discharge the employees of his division subject to the approval of the director of the department (Section 191.060, RSMo).

Does the director of the Department of Public Health and Welfare or the director of the Division of Health have control and authority over the State Cancer Hospital? We think so. The law (Section 192.010, RSMo) assigning the Cancer Commission to the Division of Health in the Department of Public Health and Welfare is in apparent obedience to the constitutional direction that there shall be no more than sixteen departments within the executive branch of state government, to which all boards, bureaus, commissions and other agencies exercising administrative or executive authority shall be assigned (Article IV, Section 12, Constitution of Missouri, 1945).

For reasons set forth in our Opinion No. 57 of March 10, 1948, to Samuel Marsh (copy attached), we perceive a legislative intention from the above statutes that the Cancer Commission and the administrator of the State Cancer Hospital shall be subject to the control and direction of the Department of Public Health and Welfare and the Division of Health in their operation of the Cancer Hospital.

While the director of the Department of Public Health and Welfare does have supervisory control over the divisions within the department, we believe he exercises such control in his discretion, and that in the absence of his exercising his right to take part in labor discussions and adopting, modifying or rejecting the written results of such discussions, the directors of the respective divisions properly participate in the labor discussions and properly adopt, modify or reject the written results. We believe the department director is a proper party and one who has a right to participate in labor discussions and subsequent understandings but that he is not a necessary party to the discussions and understandings.

Any presently existing understandings adopted by the directors of the respective divisions are valid and subsisting understandings even though not adopted by the director of the Department of Public Health and Welfare. Of course, the director of the Department of Public Health and Welfare may at any time specifically disapprove any understandings.

Accordingly, it is our opinion that future labor proposals submitted pursuant to Sections 105.510 and 105.520, RSMo, in behalf of employees of the Ellis Fischel State Cancer Hospital

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are properly presented to the director of the Division of Health for discussion and ultimate adoption, modification or rejection, and that past labor proposals presented to, and adopted by the director of the Division of Health are valid until expressly disapproved by the director of the Department of Public Health and Welfare.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 57
3-10-48, Marsh