MENTAL HEALTH:
SEARCHES AND SEIZURES:
CONSTITUTIONAL LAW:
STATE EMPLOYEES:

The Division of Mental Health and the superintendents of the facilities within such Division may promulgate reasonable rules requiring employees of the Division or of such facilities to submit packages and automobiles on facility premises to inspection. Employees who refuse to permit such a search are subject to disciplinary action including discharge.

OPINION NO. 423

November 18, 1971

FILED
423

Mr. Austin Hill, Director
Department of Public Health
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Mr. Hill:

This opinion is in answer to your request in which you ask whether the Division of Mental Health has authority to require by rule and regulation that employees of the various institutions within the Division submit their personal effects and automobiles to inspection while on state grounds for the purpose of controlling contraband and the theft of state property and what action the Division or the institution can take if the employee refuses to be searched in accordance with such rules.

You further advise that under the present regulations of the Division of Mental Health employees are required:

> "(4) To submit for inspection, when requested by the Superintendent of the Institution or his representatives, all lockers, packages, purses, briefcases, or bundles carried to, from, or within the Institution. This is also applicable to automotive vehicles parked on the hospital grounds."

The employees handbook, we understand, further provides that employees are forbidden to remove institutional supplies from the premises, to take food items and the like from the kitchen or dining area without express permission or to wear or to use clothing of any kind belonging to the institution except as otherwise provided by institutional rules.

You also state that on the entrance way to the institutional grounds signs will be posted advising automobile drivers that cars entering the institution grounds will be subject to search.

The Director of the Division of Mental Health has, "through the office of the superintendent, supervision and direct care over the business management of the several facilities under the control of the division and over their buildings, farm lands, livestock, equipment, machinery and other property." Section 202.035, RSMo 1969. The superintendents of the several major facilities of the Division of Mental Health have "complete charge, control, and management of the entire facility, under the director of the division." Section 202.050, RSMo 1969. And it has been stated with respect to the powers of the superintendent of such institutions that ". . . any well run and efficient organization, be it army, hospital or private business, must have an effective chain of command and it must be responsive, otherwise discipline fails, the organization is disrupted and attainment of the ultimate purposes and objectives become impossible." Merritt v. State Hospital No. 1, Fulton, 403 S.W.2d 940, 943 (K.C.Ct.App. 1966).

The power to make needful rules and regulations inheres in the office of the director and superintendent. Cf. Englehart v. Serena, 300 S.W. 268, 271 (Mo. 1927).

While we find no Missouri cases relative to this question there are several cases decided by the Federal Courts which give us some guidance. That is, the District Court for the Northern District of Georgia, United States v. Crowley, 9 F.2d, 927 (1922), held that a taxicab driver who drove up to the gates of a military reservation was required to submit to search by the military police even though the driver upon being requested to submit to search refused consent and attempted to turn around and leave the reservation. There the court after stating that there was no doubt that one entering a prison or penitentiary may similarly be searched without a warrant held that:

> ". . . It is to be remembered that in this case, as in that of the customs house, the object of the search is not to procure evidence of a crime, which would not be permissible, but to prevent a wrongful imporation into the camp or country of forbidden articles. A search for this purpose is not unreasonable in law, and may be made instanter and without a warrant. Such a search being lawful, that it incidentally discloses evidence of a crime does not make the evidence inadmissible."

In a case involving an employee of the United States Mint, the United States District Court for the Eastern District of Pennsylvania, United States v. Donato, 269 F.Supp 921 (1967), held that where lockers were owned by the United States and a government regulation provided that such lockers are not considered private lockers and that all such lockers were subject to be searched by security guards, such a search was permissible and justified in order to maintain the order and security of the Mint. In another case involving a government employee, the United States Court of Appeals for the Second Circuit in United States v. Collins, 349 F.2d 863 (1965) held that a search based upon regulations and statutes of customs employees' work area was a constitutional exercise of the Government as defendant's employer to supervise and investigate the performance of his duties as a customs employee. The court stated that the necessity of the government to search for lost or stolen mail in a postal area or for lost or stolen property in a customs facility is no less great than the necessity of the military to search a soldier's living quarters for stolen government property.

In a case involving the search of a student's locker, the United States District Court for the Southern District of New York in Overton v. Rieger, 311 F.Supp. 1035 (1970) held that a high school vice-principal had authority to consent to the search of students' lockers as the power to consent follows from an affirmative obligation of the school authorities to supervise children entrusted to their care and the consequent retention of control by such authorities over the lockers. And, the United States District Court for the Middle District of Alabama in Moore v. Student Affairs Committee of Troy State University, 284 F.Supp 725 (1968) held that a rule by the college in which it reserved the right to enter students' rooms for inspection purposes was reasonable as necessary to the institution's performance of its duty to operate the school.

The court stated at l.c. 729:

> ". . .The validity of the regulation authorizing search of dormitories thus does not depend on whether a student 'waives' his right to Fourth Amendment protection or on whether he has 'contracted' it away; rather, its validity is determined by whether the regulation is a reasonable exercise of the college's supervisory duty. In other words, if the regulation--or, in the absence of a regulation, the action of the college authorities--is necessary in aid of the basic responsibility of the institution regarding discipline and the maintenance of an 'educational atmosphere,' then it will be presumed facially reasonable

> despite the fact that it may infringe to some extent on the outer bounds of the Fourth Amendment rights of students."

The court continued at l.c. 730, 731, stating:

> "This standard of 'reasonable cause to believe' to justify a search by college administrators--even where the sole purpose is to seek evidence of suspected violations of law--is lower than the constitutionally protected criminal law standard of 'probable cause.' This is true because of the special necessities of the student-college relationship and because college disciplinary proceedings are not criminal proceedings in the constitutional sense. . . .
>
> "Assuming that the Fourth Amendment applied to college disciplinary proceedings, the search in this case would not be in violation of it. It is settled law that the Fourth Amendment does not prohibit reasonable searches when the search is conducted by a superior charged with a responsibility of maintaining discipline and order or of maintaining security. A student who lives in a dormitory on campus which he 'rents' from the school waives objection to any reasonable searches conducted pursuant to reasonable and necessary regulations such as this one."

Thus, while we recognize that there may be some difference between the cases noted above and the present situation, there is a workable analogy between those cases and the situation presented with respect to the search of state employees pursuant to notice, as a requirement and as a condition of employment under the authority of reasonable rules designed to protect state property, patients, and the general security of the particular facility.

We conclude that the Division and the institutions within the Division may promulgate reasonable and necessary rules and regulations authorizing the routine search of employees' personal property, including automobiles on the premises, for the purpose of preventing removal of state property from the state premises. It follows that employees refusing to submit to a reasonable search under the particular circumstances are subject to disciplinary action to the same extent as are any such employees who disobey any rules of the Division or of the institution.

We do not attempt to answer the question asking whether employees who refuse to be so searched can be searched over their objection. While a waiver of objection to search as such may not be necessary, it is clear that the acceptance of employment or the continuation of employment by an individual constitutes a waiver of objection to search when properly promulgated and reasonable rules and regulations of the Division provide that employees must submit to inspection of packages and motor vehicles of such employees on the grounds of an institution of the Division.

However, the decision in each case will depend on the circumstances and rules then existing governing administration and employment and for that reason this opinion does not cover nor is it intended to authorize a forcible search or seizure of an employee's person or property.

CONCLUSION

It is the opinion of this office that the Division of Mental Health and the superintendents of the facilities within such Division may promulgate reasonable rules requiring employees of the Division or of such facilities to submit packages and automobiles on facility premises to inspection. Employees who refuse to permit such a search are subject to disciplinary action including discharge.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

John C. Danforth

JOHN C. DANFORTH
Attorney General