

November 7, 1973

OPINION LETTER NO. 273  
Answer by letter-Wood



Harold P. Robb, M.D., Director  
Division of Mental Health  
722 Jefferson Street  
Jefferson City, Missouri 65101

Dear Dr. Robb:

This letter opinion is in response to your question stated as follows:

". . . whether a person holding both a boarding home license under House Bill No. 1165, 76th General Assembly and a license under Section 202.831 V.A.M.S. may keep patients under both licensing statutes together in the same facility.

"The problem arises from the provisions of Section 7 of House Bill No. 1165, supra. Is the provision above mutually exclusive?

"Thus, can a qualified and duly licensed home under both 'statutes' keep residents under House Bill No. 1165 and mentally retarded patients from Fulton under Section 202.831 V.A.M.S. in the same facility."

House Bill No. 1165, 76th General Assembly, Second Regular Session (approved June 22, 1972) provides for the licensing by the Division of Health of boarding houses for the aged. Sections 1-7, House Bill No. 204, 76th General Assembly, Second Regular Session (approved May 9, 1972) provides for the licensing by the Division of Mental Health of homes and institutions for the mentally retarded.

Harold P. Robb, M.D.

Section 1, House Bill No. 1165, defines a boarding house for the aged licensable under the act as:

" . . . a private home, . . . providing care . . . to three or more persons who are sixty years of age or over, all of whom are able to care for themselves, . . ." (emphasis added)

Section 7, House Bill No. 1165, prohibits a licensed boarding house from admitting or caring for persons who have been declared as mentally incompetent or who are mentally retarded.

We think it clear that a facility licensed as a boarding house for the aged cannot be licensed as a home or institution for mentally retarded persons and may not accept and care for persons who are mentally retarded or declared mentally incompetent. Conversely, we believe that a facility licensed as a home or institution for mentally retarded persons is thereby disqualified from obtaining or holding a boarding house for the aged license.

Although Section 202.831, RSMo (as amended by Section A 1-4, House Bill No. 204) authorizes the heads of the state mental health facilities to place certain of their patients in a "licensed boarding, or licensed nursing or family home," we do not believe this can override the explicit prohibition of House Bill No. 1165 so as to permit such placement of mentally retarded or declared mentally incompetent persons in licensed boarding houses for the aged.

Yours very truly,

JOHN C. DANFORTH  
Attorney General