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ATTORNEY GENERAL

OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

September 3, 1974

OPINION LETTER NO. 241

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

Dear Dr. Robb:

This letter is in response to your question asking:

"Does Section 202.905 V.A.M.S. set out below, require the licensing of private homes utilized by the Vocational Rehabilitation Units at the State Schools and Hospitals for work placement which includes residential placement for the mentally retarded?"

Section 202.905 V.A.M.S. reads as follows:

202.905 Licensing procedure to be established--
annual fees--exceptions

The division [now Department of Mental Health] shall establish a procedure for the licensing of all homes or institutions which accept mentally retarded persons for care, treatment or custody, except those state institutions operated by it. Applications for a license shall be made to the division upon forms provided by it and each application shall contain such information as the division requires, which may include affirmative evidence of ability to comply with the reasonable rules, regulations and standards adopted by the board. Each application

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for a license, except applications from a governmental unit, shall be accompanied by an annual license fee of seventy-five dollars for establishments which accept less than ten patients, and one hundred fifty dollars from establishments which accept ten or more. All license fees shall be paid to the collector of revenue for deposit in the general revenue fund of the State treasury."

You further state that:

"The Vocation Rehabilitation Units operated by the State Department of Education and the Division of Mental Health often find domestic work positions for retarded patients. The patients live in the private residence and earn their room and board and a small salary by performing domestic chores. It has been our position that these homes were not providing 'care, treatment, or custody' within the meaning of 202.905."

It is our further understanding that your question concerns only the placement of patients in private family homes under the provisions of Section 202.831, RSMo Supp. 1973, which provides as follows:

"1. The head of a state mental facility, with the consent of the person responsible for the commitment of the patient or of one of the parents, if living, having been first obtained, may place any patient, except those committed as criminally insane, in a licensed boarding, or licensed nursing home or family home upon such terms and conditions as he deems proper when he believes that such family care would benefit the patient. If the patient so placed is ineligible to receive public assistance benefits from the division of welfare, or such benefits are inadequate to meet the costs of such care, the monthly costs may be paid or supplemented out of funds appropriated for that purpose to the division of mental health; but the payment for such care shall not exceed the average per capita cost of maintenance for the prior fiscal year of patients in the state facility from which he is transferred. The

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payment made by the parent or guardian for such care shall not exceed the amount paid the state hospital.

"2. The division shall arrange for or make inspections and visits in the home in which the patient has been placed, provide adequate medical care, and may, with the consent of the person responsible for the commitment of the patient or of one of the parents, if living, return the patient to the facility or place him in another home when deemed advisable.

"3. The placement of a patient in a licensed boarding or licensed nursing home or family home shall be considered as a conditional release from the facility but shall not relieve the county of the patient's residence or those responsible for the support of a private patient, as the case may be, from the obligations imposed upon them by law for the support and maintenance of the patient if payments are made from funds appropriated to the division of mental health for such care.

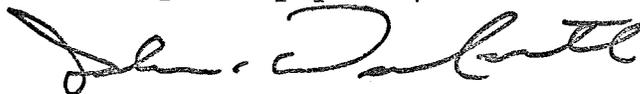
"4. The division of welfare through its county welfare offices shall cooperate with the state mental facilities and the division of mental health in locating licensed boarding or licensed nursing homes or family homes, making visits and inspections in such homes, and submitting reports regarding the homes and patients placed therein."

We do not believe that the mere fact that a placement of a retarded person is made under Section 202.831 necessarily leads to the conclusion that private family homes must be licensed under Sections 202.900, RSMo Supp. 1973 et seq. The primary question with respect to whether or not licensure is required is whether or not such persons are accepted "for care, treatment or custody" within the meaning of Section 202.905, which you have quoted. The determination of whether or not such persons are accepted for care, treatment or custody is a question of fact which must be determined by the Department in each case. In making such determinations we believe that it is competent for the Department to adopt such rules, regulations or guidelines as may be required.

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The additional question has been raised as to whether or not the fact that the Department may be making some patient support payments under Section 202.831 is determinative as to whether the placement comes within Section 202.905. It is our view that such payments are not determinative as to whether the placement is within the licensure provisions although the amount of payment may be factually indicative of the nature of the placement and relative to the determination of the question of whether care, treatment or custody is provided such patient so as to bring him within the provisions of Section 202.905.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General