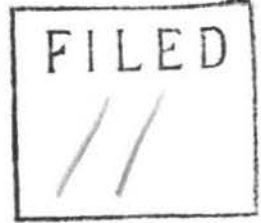


CONTAGIOUS : Liability of City of the Fourth Class.
DISEASES : Section 9025, 1933 Session Acts, does
not shift such liability to the county
in which such city may be located.

September 15, 1937.

10-4



Mr. Charles D. Brandon,
Prosecuting Attorney
Davless County,
Gallatin, Missouri.

Dear Mr. Brandon:

We acknowledge receipt of your letter of
June 14, 1937, wherein you request an opinion of this
office, which is as follows:

"Have you in your office an Opinion as
to the liability of the County or City
for the expenses in connection with con-
tagious diseases, that is for quarantin-
ing and fumigating. Is this an obliga-
tion of the County or of the City?"

"In this particular case our City is a
City of the 4th class which would have
the right under Section 7023 R. S. Mo.
1929, to pass Ordinances regulating the
handling of contagious diseases, quaran-
tine laws, etc. The City had an old
Ordinance in 1900 creating a Board of
Health, but for many years has not operat-
ed under the ordinance and has not appoint-
ed a Board of Health. The City has merely
appointed a Physician to look after the City
Employees or prisoners in case of accident
or sickness.

"Under the circumstances here, would the
County be liable for expenses in connec-
tion with cases of Smallpox or other con-
tagious diseases within the City limits?"

Yours truly,
CHAS. D. BRANDON.

P.S. Section 9025 as amended by the Laws
of 1933, page 271, would seem to throw
the costs on the County. But this might
not apply within the City limits."

As we understand your inquiry, you desire to know whether or not Section 9025, 1929 Statutes as amended by Section 9025, 1933 Session Acts, would make the county liable for the expenses in connection with contagious diseases in a city of the fourth class.

There is but one difference in Section 9025, 1929 Statutes and 9025, Session Acts of 1933 at page 271, relating to the appointment of Deputy State Health Commissioners and that is, that under the 1929 Statutes their appointment was, by the county courts, compulsory, whereas, under the 1933 Act, such appointments by the court were made optional. Said statute is as follows:

"At the first regular February term of the county court in each county of the State after this article becomes effective and at the regular February term of said county court every year thereafter, said court may appoint a reputable physician, as a Deputy State Commissioner of Health for a term of one year. In case of a vacancy in the office of the Deputy State Commissioner of Health of the county, the county court may at its next regular term of court appoint a reputable physician for the unexpired term. But the power of deciding whether or not such a deputy state health commissioner will be appointed shall be vested in the county court. If a county court of any county decides to appoint a deputy health commissioner, as empowered in this act, it shall agree with said commissioner as to the compensation and expenses to be paid for such services which amount shall be paid out of the county treasury of the county."

The only question involved in the above statute is the optional right of the county courts to appoint Deputy State Commissioners of Health for the different counties.

The rights of Boards of Alderman to make regulations and pass ordinances for the prevention of the introduction of contagious diseases in a city of the fourth class and for the abatement of the same in said city is determined by Section 7023, 1929 Statutes which is, in part, as follows:

"The Board of Aldermen may make regulations and pass ordinances for the prevention of the introduction of contagious diseases in city, and for the abatement of the same, and may make quarantine laws and enforce the same within five miles of the city."

In the case of *Barton v. City of Odessa*, 109 Mo. App. 1. c. 83, the court recognized the power and liability of a city of the fourth class under Section 5961, 1889 Statutes which is similar to said Section 7023, 1929 Statutes.

Chapter 52, 1929 Statutes, relating to public health and the powers and duties of the State Board of Health to safe guard the health of the people in the States, Counties, Cities, Villiages and Towns provides that the means to carry out such provisions may be appropriated in the manner set out in Section 9038 of said Chapter 52, which is as follows:

"The county court or city council in any such city shall have power to appropriate money out of the current revenues of the county or city, as the case may be, for the purpose of carrying out the provisions of this article."

CONCLUSION.

It is, therefore, the opinion of this department that a city of the fourth class would be liable for the expenses in connection with contagious diseases within the city, and that Section 9025, 1933 Session Acts, does not shift such liability from such city to the county in which it is located.

Yours very truly,

S. V. MEDLING
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

SVM:LB