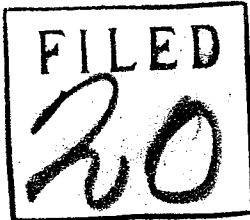


COUNTY COURTS:
HEALTH:
NURSES:
PUBLIC HEALTH:

A County Court is not authorized to employ a public health nurse unless the Division of Health has made a formal written report that it considers the services of a public health nurse necessary, under Section 192.140, RSMo 1949, or unless a petition signed by two hundred and fifty taxpayers has been presented to the County Court asking for appointment of a public health nurse or nurses, under Section 192.160, RSMo 1949.



December 23, 1953

Honorable Robert E. Crist
Prosecuting Attorney
Shelby County
Shelbina, Missouri

Dear Sir:

By letter of December 4, 1953, you requested an official opinion, as follows:

"The Department of Health of the State of Missouri sponsors a county health program whereby the State pays almost half of the cost of a county nurse.

"The Shelby County Health Council has submitted a budget of \$1980.00 to support our county health nurse for the first six months of 1954. The State will pay \$855.00 of such sum, the County Tuberculosis Association will pay \$625.00 of such sum and the balance of \$500.00 is to be paid by the County Court.

"Question: May the County Court of Shelby County, Missouri pay such sum of \$500.00 for the support of a county nurse by virtue of its authority to protect the general welfare of the county in the absence of election or petition by the voters of Shelby County, Missouri?"

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Provision for the employment of a public health nurse by the county court is authorized by Section 192.140, RSMo 1949, as follows:

"Public health nurse provided--public and private places disinfected.--Whenever the division of health considers it necessary to secure the aid and services of a visiting public health nurse, or to disinfect any building, residence or room in any hotel or dormitory, or other place in such city or county infected with infectious or contagious diseases, such division shall make formal written report of such fact to the county court or mayor of any city of the second, third, or fourth class, or both such court and mayor, and therein recommend the course of action necessary and advisable to be taken in relation thereto to prevent the spread of such infectious or contagious diseases; and in case said report is made to the mayor of any city he shall lay the same before the city council at its next meeting, and the said city council and the said county court at its next meeting after said report has been made as aforesaid, shall consider said report and recommendation and act upon it, and such city council and county court shall each be authorized to employ, at a fixed monthly compensation, a public health nurse, qualified for such service by registration as such according to the laws of this state, to visit any family, home, boarding house, dormitory or club in which is a member or members, a person or persons afflicted with a contagious or infectious disease, and upon the consent of such person or family or parent or guardian, if a minor, to assist in nursing said person and to advise such person and the persons or members of the family, boarding house, dormitory or club, as to the proper methods to be pursued to prevent the spread of such infectious or contagious disease, and also to authorize some other proper person or persons to visit and disinfect any building, residence, room in any hotel or dormitory or other place therein infected with such infectious or contagious disease upon the consent of the owner thereof."

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Other provision for employment of a public health nurse(s) is made by Section 192.160 as follows:

"Taxpayers may petition for the appointment of a nurse.--In case a petition is signed by two hundred and fifty taxpayers and presented to any city council of the second, third or fourth class or any county court, asking for the appointment of a public health nurse or nurses or that any place infected with infectious or contagious disease be disinfected, as designated in section 192.140, it shall be the duty of said city council or county court, as the case may be, to provide for the appointment of said nurse or nurses and for the disinfecting of any infected place and to pay for the same as provided for in section 192.170."

Provision for payment of such nurse(s) is made by Section 192.170.

"Money appropriated from current revenue. --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 sections 192.140 to 192.170."

Since the Legislature has by Section 192.140 authorized County Courts to employ a public health nurse after formal written report by the Division of Health that said Division considers it necessary to secure the aid and services of a public health nurse; and further authorized, by Section 192.160, the County Court to employ a public health nurse(s) upon petition signed by two hundred and fifty taxpayers, by Section 192.170 authorizes payment of such nurses when employed by virtue of the two above sections, the question arises: Are these statutory provisions exclusive, or may the County Court employ a public health nurse(s) without the written report by the Division of Health, or petition by taxpayers?

A general principle is expressed by the Missouri Supreme Court in *Kroger Grocery & Baking Co. v. City of St. Louis*, 106 S.W. (2d) 435, 1.c. 439, as follows:

"* * * *Keane v. Strodtman* (Banc) 323 Mo. 161, 167 (11); 18 S.W. (2d) 896, 898 (11) (quoting *Dougherty v. Excelsior Springs*,

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110 Mo. App. 623, 626, 85 S.W. 112, 113, to the effect that when special powers are conferred, or special methods are prescribed for the exercise of a power, the exercise of such power is within the maxim expressio unius est exclusio alterius, and 'forbids and renders nugatory the doing of the thing specified, except in the particular way pointed out'); State ex rel. v. Clifford, 228 Mo. 194, 207, 128 S.W. 755, 758, 21 Ann. Cas. 1218)."

The Missouri Supreme Court was called upon in Cook v. St. Francois County, 349 Mo. 484, 162 S.W. (2d) 252, to decide whether plaintiff was entitled to recover for her services as county health nurse. The Court held that she was not entitled to recovery, stating as follows, l.c. 254:

"* * * There was no proof that the State Board of Health made the finding and gave the authority to the county court provided in Section 9756, (now Section 192.140), supra, nor was there any proof that a petition was filed as provided in Section 9759, (now Section 192.160), supra. The proof shows that appellant was not 'qualified for such service by registration * * * according to the laws of this state' as required by Section 9756. Therefore, the appellant was not eligible, the county court was not authorized to appoint or employ her, and the order of revocation is valid." (Emphasis, and matter in parentheses ours).

Thus it is clear that the County Court is not authorized to employ or pay a public health nurse unless there has been the written report by the Division of Health contemplated by Section 192.140, or unless there has the taxpayers' petition contemplated in Section 192.160.

CONCLUSION

It is therefore the opinion of this office that a County Court is not authorized to employ or pay a public health nurse unless

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the Division of Health has made a formal written report that it considers the services of a public health nurse necessary, under Section 192.140, RSMo 1949; or unless a petition signed by two hundred and fifty taxpayers has been presented to the County Court asking for appointment of a public health nurse or nurses, under Section 192.160, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:vlw