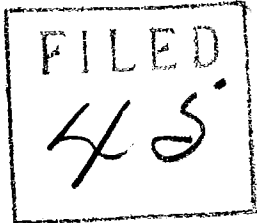


DEPARTMENT OF PUBLIC
HEALTH AND WELFARE:

DIVISION OF HEALTH :

The Division of Health does not have
power to operate a general hospital without
legislative authority.



November 18, 1947

12/16

Dr. R. M. James, Director
Division of Health
Department of Public Health and Welfare
Jefferson City, Missouri

Dear Dr. James:

This is in reply to your letter of October 31, 1947, in which you requested an opinion from this department, reading as follows:

"In cooperation with the Federal Works' Agency the Division of Health has operated the Waynesville General Hospital at Waynesville. This institution was built and equipped by the Federal Works' Agency under the provision of the Lanham Act and under this Law will have to liquidate their holdings within six months after the end of the emergency.

"This institution has been operated as an experimental unit offering a method by which hospital facilities could be provided to rural communities that were recognized as adequate in all phases of hospital care.

"In the operation of this hospital no medical care itself is offered by the operating agency. Only hospital care including generalized nursing service has been provided. Adequate hospital care is an essential in a good public health program.

"Much has been learned in relationship to rural hospitals that will be applicable to the development of the State Hospital Plan and Hospital Construction Program which will

be carried out under Public Law 725. I wish to point out again in the operation of this institution no areas in the State are excluded from the use of its facilities.

"The people of Pulaski County feel that operation of a hospital of this type could not be carried out successfully at the local level and desire to purchase the property from the Federal Works' Agency, and to transfer the title to the State. This brings up several problems on which we would like to have an opinion.

"1. Can this Division accept gifts of property such as outlined above?

"2. Can the deed transferring such property, if decided to the State, stipulate what it will be used for?

"3. Can the Division of Health operate a general hospital when there are no restrictions as to residency, race, creed or color?

"4. Pending specific Legislation, if needed, can the income from such a general hospital be used for operation and maintenance purpose?"

Because of the view this department takes in answering part 3 of your inquiry, it will be unnecessary to consider at this time parts 1, 2 and 4.

The general duties and powers of the Division of Health are set out in Section 14, Laws of 1945, at page 949:

"It shall be the general duty and responsibility of the division of health to safeguard the health of the people in the state and all its subdivisions. It shall make a study of the causes and prevention of diseases. It shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders and findings to prevent the spread of such diseases and to determine the prevalence

of such diseases within the state. It shall have power and authority, with approval of the director of public health and welfare, to make such orders and findings as will prevent the entrance of infectious, contagious and communicable diseases into the state."

Elsewhere in the act providing for the Department of Public Health and Welfare, and for a Division of Health within the department, are provisions containing specific powers and duties of the Division of Health. Nowhere in the act is there any express provision for the operation of a general hospital at waynesville, Missouri, or any other location. If the division has such power, it must be implied, and we are of the opinion that it is not.

In laws of Missouri, 1945, commencing with page 969, House Bill No. 280 is set out, providing for the establishment of county health centers. Certainly a reading of the provisions of this bill leads one to believe it was the intent of the Legislature that the operation of hospitals or health centers, such as the one in question, should be done by local authorities. Along this general line, see also laws of 1945, pages 980-987.

Nor can we say that the Division of Health has implied power to operate a general hospital under the powers given to the Division by Section 3, Laws of 1945, page 973:

"The Division of Health of the Department of Public Health and Welfare is hereby designated the official state agency to receive any and all Federal and other grants and aids for making a survey and for the construction of hospitals and health centers: Provided, that private grants and aids to private hospitals, health centers and units in this state, by will, deed or gift shall vest in such private institutions under the terms and provisions of such will, deed or gift and the Division of Health of the Department of Public Health and Welfare shall have no right, title, interest or control over grants and aids to private hospitals so granted, unless granted in said will, deed or gift. It shall be empowered to receive

any and all such grants and aids under the terms of such grants and aids and to pay them out under any and all provisions as may be attached to such grants and aids. It shall be authorized to render such reports as may be required under any and all grants and aids; provide such minimum standards for maintenance and operation of hospitals and health centers as may be required under the terms of such grants and aids; and to require compliance with such standards in the case of hospitals and health centers which shall have received such grants and aids."

Under this section, the Division of Health is designated the official state agency to receive such grants and aids which might be forthcoming from the Federal government for the particular purposes enumerated. Again, we are unable to find language which empowers a Division of Health to operate a general hospital.

Next, there arises the question of appropriations for such a purpose. In House Bill No. 175 of the 64th General Assembly, the appropriation bill for the Division of Health, nowhere is there mention of an appropriation of moneys to be expended for the operation of a general hospital at Waynesville, Missouri. We realize that at the present the hospital is being conducted with Federal funds given to the State for public health purposes. However, if the State of Missouri is now to take over complete operation of this hospital, we believe that the Legislature would have to make appropriations for that purpose. Under the provisions of Article IV, Section 28 of the Constitution of 1945, it is doubtful if the State Treasurer could issue warrants for the payment of obligations incurred by the hospital, in the absence of an appropriation. Article IV, Section 28, reads as follows:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general

accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

The State Board of Health has an opinion from this Department under date of July 13, 1943, addressed to Dr. James Stewart, stating as its conclusion:

"From the foregoing, it is the opinion of this department that the State Board of Health would be acting within the scope of its authority to operate a general hospital when all funds to be used in the operation and maintenance of such institution are granted to the State Board of Health by an agency of the Federal Government."

We do not now disaffirm that opinion, but we do say that when Federal funds and the conditions of the Federal grants are no longer present for operating this hospital, the Division of Health may not continue to operate the same without legislative authority.

Indeed, there must be a tacit admission on the part of some that legislative action is needed before the Division will be enabled to operate the particular hospital in question, as witness the wording of Senate Bill No. 277, introduced in the 64th General Assembly, referred to the committee on Public Health and Welfare and not as yet reported upon:

"Section 1. That an act of the 63rd General Assembly known as Senate Bill No. 349, approved May 3, 1943, be and the same is hereby amended by inserting immediately following Section 13 of said Senate Bill No. 349 one new section, to be known as Section 13a and to read as follows:

"Section 13a. The Division of Health is hereby authorized to operate the Trachoma Hospital at Molla, Missouri, and the General Hospital at Waynesville, Missouri."

Mr. W. H. James, Director -6-

Conclusion.

It is the opinion of this department that the Division of Health does not have the power, express or implied, to operate a general hospital without legislative authority.

Respectfully submitted,

JOHN R. DATTY
Assistant Attorney General

APPROVED:

J. R. TAYLOR
Attorney General

JR:ml