

STATE BOARD OF HEALTH - AUTHORITY OF THE BOARD TO EMPLOY AGENTS  
AND FIX COMPENSATION.

November 20, 1934.



Emmett P. North, M. D.  
President State Board of Health  
Jefferson City, Missouri

My dear Doctor North:

Acknowledgement is made of your request for  
an opinion on the following matter:

"On July 2, 1934, the State Board of  
Health had its regular meeting, unani-  
mously passed a motion that the salary  
of Mr. J. J. Ferns, Medical Licensure  
be raised to \$300.00 per month, effect-  
ive July 1, 1934.

Kindly render us an opinion as to the  
legality of this act."

Many years ago the State Board of Health of  
Missouri was created. Authority was given the Gov-  
ernor by and with the advice and counsel of the Senate  
to appoint seven persons, five of whom are required  
to be physicians in good standing and at least five  
years a resident of the State next preceding their  
appointment, which body was to constitute the Board.

The general duties of the Board are stated in  
Section 9015, a portion of which section reads as  
follows:

Emmett P. North, M. D.

-2-

November 20, 1934.

"It shall be the duty of the state board of health to safeguard the health of the people in the state, counties, cities, villages and towns. It shall make a study of the causes and prevention of diseases and shall have full power and authority to make such rules and regulations as will prevent the entrance of infectious, contagious, communicable or dangerous diseases into the State. "

Shortly after the establishment of the Board it was realized that one of the most effective means of safeguarding the public health was to strictly supervise and regulate the right to practice medicine in this State. To effectuate this need a general medical practice act was adopted. One of the sections of this act, now Section 9112 provided:

"The state board of health shall have general supervision over the registration of all practitioners of medicine, surgery and midwifery in this state. "

By means of the foregoing provision direct general supervision over practitioners of medicine and surgery is given to the State Board of Health in no uncertain terms.

It is certain that the legislature did not expect or intend the members of the Board to personally do all the administrative and clerical work necessary to effectuate the purpose of the act and to fulfil the numerous duties placed upon them by the various laws applicable to the Board. They were expected to provide for themselves such assistance as would be necessary to effectuate the purposes of the act.

As one of the many indications of this intent we refer to the fact that the members of the Board are required to serve without compensation. Section 9020. Laws of Missouri 1933, page 269.

Furthermore, under the provisions of Section 9017 it is provided:

"In addition to the divisions of vital statistics and laboratories already established, the board shall establish the following divisions: Preventable diseases, including tuberculosis, child hygiene, venereal diseases; and other divisions as it may deem necessary from time to time. The board shall formulate rules and regulations for the proper conduct of these divisions. "

By virtue of the foregoing statutes authorizing the establishment of such divisions as the Board may deem necessary from time to time, the division of medical licensure has been established and under the provision of Section 9112 heretofore referred to it is specifically provided that the State Board should have general supervision over the subject matter of registration of practitioners of medicine and surgery.

It is therefore inescapable that the State Board would have authority to employ a director of medical licensure and to establish the amount of compensation he is to receive as well as to prescribe the other rules and conditions under which he is to be employed.

For precedent in this decision we direct attention to the case of Aull vs. City of Lexington, 18 Mo. 401. The City of Lexington in 1851 adopted an ordinance providing for a city board of health whose duties were prescribed as follows:

"It shall be the duty of the board of health to exercise a general supervision over the health of the city, and from time to time make such report to the mayor and city council as they may deem necessary; and said board are hereby vested with all power necessary to carry the provisions of this ordinance into effect."

Under that authority the Board leased quarters for a transient hospital in which to place persons landing from steamboats infected with cholera. The plaintiff in the case was suing the city for the rental agreed upon by the board. The court held that the term "general supervision over the health of the city" conferred more than mere authority to examine into the condition of the health of the city, that it was intended that the board should have active and sufficient power to be exercised for the public good, and the court provided for the payment of the agreed rental.

In the case of Kent vs. Village of Tarrytown, 64 N.Y. Supplement, 178, the court considered the power of the board of health to employ persons to carry out their rules and regulations. The plaintiff in that case had been employed by the board to investigate local health conditions and was suing the municipality for the reasonable value of the services. The defense on the part of the Village was made that:

"The criticism is made that it nowhere appears that any legal regulation or order was made by the Board of Health, that without such preliminary step it was not authorized to employ any person \* \* \* the complaint should have contained an averment of the regulations and orders as made by the board of health before any legal employment would be shown."

The court overruled the contention of the defendant stating that in view of the duties of the board to execute the laws to suppress nuisances and to protect the public health, narrow construction should not be placed upon the board's authority to legally employ assistance, l.c. 181:

Emmett P. North, M. D.

-5-

November 20, 1934.

"\* \* \* it would be quite within the powers of the board to make employment of persons when necessary to inspect, report and describe a given condition, in order that the Board of Health might intelligently act thereon, and that the language of the statute, that it would employ persons to carry into effect its rules and regulations, is not necessarily limited to the right to employ after the nuisance has been declared, but it is broad in its scope, when taken in connection with the purposes and objects of the law, to authorize the employment of necessary persons in connection with the whole subject matter, as well as the duties which they are obligated to perform. "

CONCLUSION

It is therefore the opinion of this department that the State Board of Health was acting within the powers granted it in determining the compensation of the Director of Medical Licensure to be paid to the Director of Medical Licensure.

Respectfully submitted

HARRY G. WALTNER, JR.  
Assistant Attorney General

APPROVED:

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Attorney General.

HGW:EMW

