

HEALTH:  
HOTELS:  
INSPECTION OF ROOMS:  
NUMBER OF ROOMS:  
HOW DETERMINED:

Inspectors of State Board of Health are authorized to inspect all rooms of hotel to determine whether or not the provisions of article 7, chapter 93 R.S. Mo. 1929 are being complied with.  
Number of rooms for living purposes as ascertained by number assignable to guests.

January 14, 1938

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FILED  
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Mr. Harry F. Parker, M.D.,  
State Health Commissioner,  
Jefferson City, Missouri.

Dear Sir:

Your request dated January 11, 1938 for an official opinion from this department was referred to the writer, which request is as follows:

"I am interested in having an interpretation of the statutes regarding the inspectors in the Food and Drug Department who also have the inspection of hotels.

1. Will you give me an opinion on what constitutes hotels and whether or not apartments should pay a state license too?
2. In making inspection of hotels has the inspectors authority to inspect each and every room separately in order to determine not only the number of rooms but the sanitary conditions, ventilation, et cetera? Can a hotel or inn keeper refuse an inspection of individual rooms of said hotel?
3. The statutes make reference to the number of rooms, or guests as occupants of a hotel, I wish an interpretation on this part of the statutes."

I

Answering the first section of the request as to what constitutes a hotel and whether or not apartments should pay a state license tax too, I find:

In the case of the City of Independence v. Richardson,

232 Pacific 1044, we find that a hotel is defined as follows:

"A hotel is a business institution which is held out to the public as a house where all travelers and strangers or other transient persons having means of payment, and of proper demeanor and fair repute, who choose to patronize it, must be received and accommodated to its capacity, without previous agreement for accommodation or agreement as to the duration of their stay." (Words & Phrases Third series, page 18)

In "Words and Phrases, Third series" the apartment house and hotel are distinguished as follows:--

"As used in restriction against erection of 'hotel', 'apartment house' is not a 'hotel', but a building used as a dwelling for several families living separate; a 'hotel' being a building held out to the public as a place where all transients will be entertained as guests for compensation." Satterthwait v. Gibbs, 135 At. 862.

Section 13091 R.S. Mo. 1929 defines what building shall be construed as hotels under the term of said section which section is as follows:

"That every building or other structure, kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, in ten or more rooms are furnished for the accommodation of such guests, whether with or without meals, shall for the purpose of this article be deemed a hotel, and upon proper application the food and drug commissioner shall issue to such above described business a license to conduct a hotel: Provided, that it shall be unlawful for the owner of any such building or other structure to lease or let the same to be used as a hotel until the same has been inspected and approved by the food and drug commissioner."

In the case of Metzler v. Hotel Company, 135 Mo. App. 410, 416, a hotel is defined as:

"A place where transient guests are admitted to lodge, as well as one where they are fed and lodged."

The apartment house in the ordinary term, is a building, the apartments of which are let to tenants for use and occupancy for living quarters for a certain period upon a special contract, and which is not advertised or held out for occupancy to the general public, but only to those tenants that the owner of the building may choose. It differs from the apartment hotel in that it is not advertised or held out to the general public.

If the building contains apartments and or individual rooms and is kept, used, maintained, advertised or held out to the public to be a place where sleeping and or dwelling accommodations are furnished for pay to transient or permanent guests, and if it contains ten or more rooms, which are furnished for the accommodation of such guests, whether with or without meals, it is a hotel within the meaning of the above statutory definition of "hotel", and subject to the statutory regulations of the Health Department.

#### CONCLUSION

Taking the foregoing statutory definition of the word "hotel" into consideration, it is the opinion of this department that any building in Missouri which contains ten or more rooms for sleeping and or dwelling quarters, which are furnished for the accommodation of transient or permanent guests, and which is kept, used, maintained, advertised and held out to the public for dwelling, lodging and or feeding purposes is a hotel and is subject to the rules and regulations of the State Board of Health.

II

As to Section 2 of your inquiry we find that:

Section 13084 R.S. Mo. 1929 provides as follows:

"It is hereby made the duty of the food and drug commissioner to inspect or cause to be inspected, at least once annually and as often thereafter as he may deem necessary, every hotel in the state, and for that purpose he shall have the right of entry and access thereto at any reasonable time. Whenever, upon such inspection, it shall be found that such business and property so inspected is not being conducted, or is not equipped in the manner and condition required by the provisions of this article, it shall thereupon be the duty of the food and drug commissioner to notify the owner, proprietor or agent in charge of such business, or the owner or agent of the building so occupied, of such changes or alterations as may be necessary to effect a complete compliance with the provisions of this article. It shall thereupon be the duty of such owner, proprietor or agent in charge of such business, or such owner or agent of the building so occupied to make such alterations or changes as may be necessary to put such building and premises in a condition that will fully comply with the provisions of this article; all permanent repairs and alterations to the building and premises to be made by the owner thereof: Provided, however, that thirty days' time after receipt of such notice shall be allowed for conforming to the requirements of this article. If at the expiration of the required notice such owner or agent of the building so occupied refuse or fail to comply with said sections mentioned in such notice, then it shall be the duty of the food and drug commissioner to close said hotel until such requirements are complied with."

Section 13085 R.S. Mo. 1929 makes it the duty of the commissioner of health and his deputies to see that all of the provisions of Article 7, chapter 93 are complied with

which article contains Section 13083 to Section 13114 both inclusive of the Revised Statutes of Missouri 1929.

Section 13093 R.S. Mo. 1929 requires the hotel operator to obtain a license, the amount charged for which depending upon the number of rooms in the hotel.

By accepting the license to operate the hotel and exercising the privileges under the restrictions and limitations of said Article 7 of chapter 93 which require the hotels to be inspected for the purpose of determining whether or not the provisions of said article are being complied with, the hotel operator waives his constitutional right of search and seizure.

In the case of State v. Bennett, 288 S.W. 50, the court held:

"Defendant, by accepting hunter's license under Rev. St. 1919, 5598, and exercising the privilege under the restrictions and limitations of statute in sections 5581, 5596, and 5645, the latter requiring him to submit to inspection and counting of quail in his possession by game warden, waived constitutional rights invoked so far as applicable to facts."

In the case of the one who accepts the license to operate a hotel and submit to the inspection law is analogous to the case where the person accepts a hunting license and submits himself to search to determine that the fish and game laws are being complied with.

By Section 13096 R.S. Mo. 1929 it is necessary for the commissioner and his deputies to inspect the hotel to determine whether its provisions are complied with.

Section 13100 R.S. Mo. 1929 provides as follows:

"Every hotel in this state shall be properly plumbed, lighted and ventilated, and shall be conducted in department with strict regard to health, comfort and safety of the guests: Provided, that such proper lighting shall be construed to apply to both daylight and illumination, and that such proper plumbing shall be construed to mean that all plumb-

ing and drainage shall be constructed and plumbed according to approved sanitary principles, and that such proper ventilation shall be construed to mean at least one door and one window in each sleeping room. No room shall be used for a sleeping room which does not open to the outside of the building or upon light wells, air shafts or courts, and there must be at least one window with opening so arranged as to provide easy access to the outside of the building, light wells or courts."

Section 13105 R.S. Mo. 1929 provides as follows:

"All hotels hereafter shall provide each bed, bunk, cot or other sleeping place for the use of guests with pillow slips and under and top sheets. Each sheet shall be ninety-nine inches long and of sufficient width to completely cover the mattress and springs: Provided, that a sheet shall not be used which measures less than ninety-five inches after being laundered. Said sheets and pillow slips shall be made of white cotton or linen, and all such sheets and pillow slips after being used by one guest must be washed and ironed before they are used by another guest, a clean set being furnished each succeeding guest."

Section 13106 R.S. Mo. 1929 provides as follows:

"All bedding, including mattresses, quilts, blankets, pillows, sheets and comforts, used in any hotel in this state must be thoroughly aired, disinfected and kept clean: Provided, that no bedding, including mattresses, quilts, blankets, pillows, sheets or comforts, shall be used which is worn out or is unfit for further use: Provided further, that after six months from the passage of this law no mattress on any bed, bunk or cot in a hotel shall be used which is made of moss, seagrass,

excelsior, husks or shoddy. Any room in any hotel infested with vermin or bedbugs shall be fumigated, disinfected and renovated until such vermin or bedbugs are exterminated. All carpets and equipment used in hotels, as well as the walls and ceilings, must be kept in a clean and sanitary condition."

Section 13007 R.S. Mo. 1929 provides as follows:

"\*\*\*\*\* Any person who shall obstruct the commissioner, or any of his assistants, by refusing to allow him entrance to any place which he desires to enter in the discharge of his official duty, or refuse to deliver to him a sample of any article of food or drug made, sold, offered or exposed for sale by such person when the same is requested and when the value thereof is tendered, shall be guilty of a misdemeanor, punishable by a fine of not exceeding fifty dollars for the first offense and not exceeding five hundred dollars, nor less than fifty dollars for each subsequent offense."

#### CONCLUSION

Following the foregoing authorities it is the opinion of this department that the commissioner and his deputies are authorized to inspect each and every room of a hotel separately to determine whether or not the provisions of Article 7, chapter 93 R.S. Mo. 1929 are being complied with.

It is further the opinion of this department that if the hotel or inn keeper refuse to permit such inspections that he is guilty of a misdemeanor and may be complained against and prosecuted in accordance with the provisions of Section 13007 R.S. Mo. 1929.

#### III

As to the third section of your request I find that section 13093 R.S. Mo. 1929 provides as follows:

"The fee for licenses to conduct a hotel in this state shall be three

(\$3.00) dollars, except hotels containing fifteen rooms and less than twenty for the accommodation of guests, the license fee shall be five (\$5.00) dollars, and hotels containing twenty rooms and less than thirty for the accommodation of guests the license fee shall be ten (\$10.00) dollars, and hotels containing thirty rooms and less than forty for the accommodation of guests the license fee shall be fifteen (\$15.00) dollars, and hotels containing forty rooms and less than fifty for the accommodation of guests the license fee shall be twenty (\$20.00) dollars, and hotels containing fifty rooms and less than seventy-five for the accommodation of guests the license fee shall be twenty-five (\$25.00) dollars, and hotels containing seventy-five rooms and less than one hundred for the accommodation of guests the license fee shall be thirty (\$30.00) dollars, and hotels containing one hundred rooms and less than two hundred for the accommodation of guests the license fee shall be thirty-five (\$35.00) dollars, and hotels containing two hundred rooms and less than three hundred for the accommodation of guests the license fee shall be forty (\$40.00) dollars, and hotels containing three hundred rooms, and less than four hundred for the accommodation of guests the license fee shall be forty-five (\$45.00) dollars, and hotels containing four hundred rooms and more for the accommodation of guests the license fee shall be fifty (\$50.00) dollars; which shall be paid to the food and drug commissioner before said license is issued, and said license shall be kept in the office of said place in a conspicuous manner, properly framed. Said license may be revoked by the commissioner at any time when the law or regulations are not being complied with."



Section 13094 R.S. Mo. 1929 provides as follows:

"In all hotels within the meaning of this article the parlor, dining room, kitchen and office shall be construed to mean a guest room."

By these two sections the amount to be charged for the license is based upon the number of rooms the hotel contains for the accommodation of guests. The rooms for accommodation of guests refer to rooms the guests occupy for sleeping and or living quarters, that is the rooms which are assigned to them when they register at the hotel, and they also include the dining room, kitchen, parlor and office.

CONCLUSION

It is therefore the opinion of this department that the number of rooms for the basis of the amount of the license for the hotel is determined by the number of rooms such hotel has assignable to guests for their accommodation, including the parlor, dining room, kitchen and office.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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