

STATE BOARD OF HEALTH: Power to transfer venereal disease patients  
REGULATIONS: for quarantine in hospital in the State  
of Missouri.

March 29, 1943



Honorable James Stewart, M. D.  
State Health Commissioner  
State Board of Health  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion under date of March 18, 1943, which reads:

"There is being contemplated at this time the establishment of a large Isolation Hospital for infectious venereal diseases in Missouri by the United States Public Health Service.

"I would like to have an opinion from your office on the following question:

"Does the State Board of Health have the power to transfer venereal disease patients across county borders for quarantine in a Federal or State quarantine hospital?"

There are statutory provisions now for the county court to send indigent insane persons to hospitals in counties other than that in which the insane persons reside, upon notice to the person to be confined and hearing before a court or jury, if desired. (See Sections 9335-9342, inclusive, R. S. Missouri 1939.)

Under Section 9735a, page 371, Laws of Missouri 1941, the State Board of Health is directed to comply with the provisions of any act of Congress for distribution of funds of the United States appropriated by Congress for health purposes and comply with any of the rules or conditions made by the United States Public Health service.

There is also a special fund under this section known as the Venereal Disease Control Fund to be drawn out of the State treasury on warrant by the executive officers of the State Board of Health.

Section 9735, R. S. Missouri 1939, provides the duties of the State Board of Health and reads:

"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. It may send representatives to public health conferences when deemed advisable, and the expenses of such representatives shall be paid by the state as provided in this chapter for expenses of the members of the state board of health."

Also, other duties were added by the Sixty-first General Assembly. However, these are not pertinent except as shown by Section 9735a, supra.

Section 9736, R. S. Missouri 1939, provides the Board shall designate diseases which are infectious, contagious, communicable or dangerous in nature and shall make and enforce regulations and procedures to prevent the spread of such diseases within the State.

"The board shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate rules, regulations and procedures to prevent the spread of those diseases and to determine the prevalence of said diseases within the state."

Section 9748, R. S. Missouri 1939, provides all rules and regulations authorized by the State Board of Health shall supersede local ordinances, and shall be observed throughout the State and enforced by all local and state health authorities.

"All rules and regulations authorized and made by the state board of health in accordance with this chapter shall supersede as to those matters to which this article relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the state board of health which may be necessary for the particular locality under the jurisdiction of such local authorities."

In Volume 59, C. J., Section 120, page 112, we find the following as to territorial jurisdiction of state officers.

"Jurisdiction of state officers is coextensive only with the territory of the state from which they derive their powers."

Also, in Volume 59, C. J., Section 96, page 107, points out that it is well established that all regulations promulgated must comply with the manner prescribed by statute to have the force and effect of law.

In Ex parte Lucas, 61 S. W. 218, 130 Mo. 218, 1. c. 233, the court holds that it is clearly within the police power of the State to regulate and prevent the spread of contagious diseases.

"\* \* \* \* \* Laws enacted for the purpose of regulating or throwing restrictions around a trade, calling, or occupation, in the interests of the public health and morals, are everywhere upheld and sustained. Such laws are within the police power of the State, and are universally sustained where enacted in the interests of the public welfare. \* \* \* \* \*

Therefore, it is the opinion of this Department that in view

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of the foregoing statutory provision making it the duty of the State Board of Health to safeguard the health of the people all over this State and to make and enforce adequate rules and regulations and procedure to prevent the spread of such infectious, communicable or dangerous diseases, and in addition to the above, with the police power vested in the State of Missouri through the State Board of Health, unquestionably the Board may promulgate regulations requiring the transfer of such venereal diseased patients as it considers necessary for the protection of the public to such quarantine quarters in a hospital within the State of Missouri.

Respectfully submitted

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

ARH:BAW