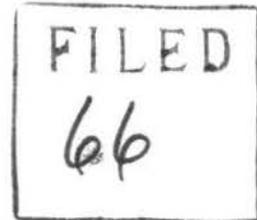


May 7, 1971

Answer by letter-Jones

OPINION LETTER NO. 66

James A. Mertz, D.C., Secretary  
State Board of Chiropractic Examiners  
5121 South Kingshighway  
St. Louis, Missouri 63109



Dear Dr. Mertz:

This is to acknowledge receipt of your request for an opinion from this office in regard to the performing of investigations by the State Board of Chiropractic Examiners and/or the hiring of investigators.

Subsection 9 of Section 331.060, RSMo 1969, as set forth in House Bill No. 85, of the 75th General Assembly, now provides that the Board of Chiropractic Examiners shall suspend or revoke the license of any chiropractor if it is determined as provided by Chapter 161, RSMo 1969, that a licensee is guilty of certain statutory violations. Previously, subsection 1 of Section 311.060, RSMo 1959, read as follows:

"It shall be the duty of the board of chiropractic examiners to carefully investigate all charges of immoral or illegal actions of anyone to whom a license to practice chiropractic in this state has been issued. Upon complaint being made to the board it shall investigate and if it deems probable cause exists for the complaint, shall furnish a copy of the complaint to the accused by registered mail, together with a notice of the time and place for the hearing of same, which shall not be less than thirty days after the depositing of said communication in the United States mail." (Emphasis ours)

James A. Mertz, D.C.

Senate Bill No. 284, enacted by the 73rd General Assembly and incorporated into the Revised Statutes as Sections 161.252 through 161.342, RSMo Cum. Supp. 1965, established the Administrative Hearing Commission. Under these statutory provisions, the Administrative Hearing Commission has exclusive authority under the law to conduct hearings and make findings of fact and conclusions of law in those cases wherein, under the law a license issued by the State Board of Chiropractic Examiners could be revoked or suspended. In this regard, Section 11 of Senate Bill No. 284, which was not included in RSMo Cum. Supp. 1965, nor has it been included in the Missouri Revised Statutes of 1969, provided as follows:

"Section 11. Any provisions of existing statutes pertaining to the administrative agencies listed in section 3 [161.272] which are in conflict with this act are repealed."

However, Section 161.282, RSMo Cum. Supp. 1965, specifically provides for the initiation of proceedings before the Administrative Hearing Commission "Upon receipt of a written complaint from an agency . . . or upon receipt of such complaint from the attorney general, . . ." (Emphasis ours).

As a result of the above statutory provisions, it is our view that although the Administrative Hearing Commission Act and subsequently House Bill No. 85 of the 75th General Assembly have repealed the statutory authority of the State Board of Chiropractic Examiners to conduct formal hearings and to make findings of fact and conclusions of law in regard to complaints upon which licenses of chiropractors may be suspended or revoked, such complaints received by the State Board are not to be transferred in a routine manner to the Administrative Hearing Commission. The State Board of Chiropractic Examiners has the authority and duty to investigate the validity of such complaints for the purpose of determining whether or not it should lodge a complaint against the licensee with the Administrative Hearing Commission. Although the State Board of Chiropractic Examiners does not have authority to compel the attendance of witnesses and the production of records and papers, its investigation may proceed by means that are reasonable and necessary. This is not to say that members of the Board have the authority to enter a practitioner's office to secure information for possible disciplinary action without the consent of the licensee. It is our view, however, that the State Board has authority to hire an investigator to obtain information necessary to determine whether the Board should file a complaint with the Administrative Hearing Commission.

Yours very truly,

JOHN C. DANFORTH  
Attorney General