

STATE BOARD OF HEALTH: All applications for licenses to deal in narcotic drugs must be passed upon by the State Board of Health. Public officers and others constituting a governmental board accept office in view of additional burdens being placed upon them.

September 10, 1937

Dr. Harry F. Parker
State Board of Health
Jefferson City, Missouri



Dear Dr. Parker:

This will acknowledge receipt of your letter of recent date relative to the following facts:

"In taking up the provisions as set forth in this act, I would like to know whether or not the State Board of Health must pass on all applications for licenses, or may this duty be performed by the health commissioner himself. The State Board of Health receives only fees accruing to the division of medical licensure for its operation expense.

"The department of health of the State of Missouri receives from general revenue its biennial appropriation and for the 1937-38 appropriation, all funds appropriated were earmarked as to personal service for the various divisions and no specific appropriation was made to the department of health for the purpose of administering this particular act.

"As far as I can see, the health department is not in position to take on this added burden. At the last session of the Legislature, a gentlemen's agreement was made

wherein certain funds were asked for to meet matching funds of the United States Public Health Service, with a pledge that they would be used only for the specific purpose for which they were appropriated. This office is operating within its appropriation with the end in view that there will be no deficiencies for this department. Since the Federal Narcotic Act is similar to the State Act in every respect and would be an overlapping with the Federal act in order to enforce the State act identically as it relates to the Federal. The State act, in effect, provides that compliance with the Federal act should be deemed sufficient to carry out the mandates of the State act. To properly function, this department cannot, without a heavy deficiency, set up a division for the purpose of properly administering the above bill. Neither can the State Board of Health, as a board, pass on all applications for licenses under the present funds allotted to it, and I am respectfully requesting you to advise me just what should be done in this connection."

At the outset we observe that the act regulating the sale of narcotic drugs has been passed by the Legislature in the interest of the public welfare. The act is comprehensive in its scope, designed to embrace all persons who would choose to come within its terms, and the duty of enforcing the act has been placed upon the State Board of Health, Laws of Mo., 1937, p. 355.

In response to the first question - as to whether the State Board of Health must pass upon all applications for licenses to manufacture and/or wholesale narcotic drugs, your attention is respectfully directed to Laws of Mo., 1937, p. 347, Section 3 reading as follows:

"No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the State Board of Health."

Section 4 reads in part as follows:

"No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the State Board of Health.

"(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

"(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

"No license shall be granted to any person who has within five years been convicted of a will-

ful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict."

You will note that every person desiring to deal in narcotics must first obtain a license so to do from the State Board of Health, and also that before receiving such license, the applicant must have submitted proof satisfactory to the State Board of Health, as above indicated. The above sections are plain, without ambiguity and can admit of no other construction nor may any intent to the contrary be implied.

From this it follows: who is a State Board of Health? Under the provisions of Section 9013 of R. S. Mo., 1929, it is stated in substance that seven persons shall constitute a board, which shall be styled the State Board of Health. Section 9015 provides that it is the duty of the State Board of Health to safeguard the health of the people in the state.

In the case of State ex rel Baria v. Alexander 130 So. 750, 756, the Supreme Court of Mississippi, in considering an act performed by two members of a board acting independently without a meeting said:

"When several persons are authorized to perform a public service, or to do an act of a public nature as an organized body, which requires deliberation, they must be convened in a body, in order that they may have the counsel and advise of every member. 24 R. C. L. p. 615, Sec. 72, and cases cited in the notes. Any action otherwise taken although with the consent of the

body is illegal. This principle is elementary * * * * "

In 46 C. J. 1034, Section 297, a general proposition of law is stated as follows:

"An official board cannot delegate to others a power that can be exercised only by itself."

In the case of State v. Zimmerman, 197 N. W. 823, 829, the Supreme Court of Wisconsin, in discussing when a board has been created by statute that a majority may act, tersely said:

"The rule is too familiar to require any citation of authority that, when a board is created by statute, a majority may act."

Attention is again directed to the words as used in Section 4, supra, relating to when the license shall be issued to an applicant, reading as follows:

" * * * furnished proof satisfactory to the State Board of Health."

It is obvious from this part of the statute that a great deal of discretion is conferred on the State Board of Health with reference as to what constitutes "proof satisfactory", that the applicant is qualified to engage in the handling of narcotic drugs.

In the case of State v. Reber, 126 S. W. 2397, 2399, the court said:

"An officer to whom a discretion is entrusted by law cannot delegate to another the exercise of that discretion, but after he has himself exercised that discretion he may, under proper conditions, delegate to another the performance of a ministerial act to evidence the result of his own exercise of the discretion."

From these considerations you will have noticed that when several persons constitute a board organized to render a public service which requires deliberation, they must necessarily convene themselves for the purpose intended by law. In the instant matter all applications to manufacture and/or wholesale narcotics must be presented to the board sitting as a body in order that they may properly pass upon the applicants qualifications. You will have observed that a board, or officer in whom a discretion has been vested must exercise that discretion and after its exercise may delegate to another the performance of a ministerial act which flows as a result of the exercise of such discretion.

It is to be pointed out that a majority of the board may pass on any matter pending before it, provided that they have convened for that purpose. Thus, the majority of those constituting the State Board of Health may pass on an applicant as presented by the present inquiry.

In view of the above, we rule that all applications to manufacture or wholesale narcotic drugs must be passed upon by the State Board of Health sitting as a body convened for that purpose.

II.

We have considered the general appropriation

made by the legislature, Laws of Mo., 1937, p. 110, for the State Board of Health, and as you have stated the funds have been "earmarked" as to personal service and for other purposes, except as designated by subdivision D. of Section 40 of the appropriation relating to operation, reading as follows:

"General expenses: communication, printing and binding, transportation of things, travel, within and without the State, rent, other general expense; Material and supplies consisting of educational, scientific and recreational supplies, laundry, cleaning and sanitation supplies, medical, surgical and hospital supplies, stationery and office supplies: Maintenance, rent, repairs and other general expense incidental to the operation of the Trachoma Hospital . . . \$77,500.00",

may be applied to any of the general operating expense of the State Board of Health, whether it is the division of vital statistics or child hygiene. It is fundamental in construing appropriation acts that they shall be construed by the same rule as other legislation, and where the language is plain and obvious, they should not be construed as to defeat their purpose, 59 C. J. 262, Section 401; State ex rel Jacobs Meyer v. Thatcher 92 S. W. (2d) 640. Thus, when we consider the above part of the appropriation act, it is apparent that general expense of the State Board of Health must be paid from these monies appropriated.

Moreover, it is to be pointed out that legislators may appropriate wisely or unwisely, too sparingly, or too extravagantly, the wisdom of which we cannot be concerned in the face of a duty that is manifest. By analogy, the very apt statement expressed by

the Supreme Court of Georgia in the case of McFarlin v. Board of Drainage Commissioners, 113 S. E. 447, 451, is here applicable:

"Whenever a public officer accepts such office and enters upon the discharge of his duties as such, he takes it with all the burdens that are placed or may be placed upon such office according to law; and if he retains the office and undertakes to perform the duties thereof for a fixed compensation he does so with the possibility that such duties may be increased or diminished."

If it becomes necessary in the enforcement of the present narcotic act to incur expenses in its administration, such expense should be paid from the amount appropriated for the general expenses of the State Board of Health, except as hereinafter pointed out, for it is upon the board, its officers, agents and representatives to enforce the provisions of the act. Section 19, supra.

It is not unreasonable to assume that the legislature considered the present personnel of the State Board of Health, together with the amount of money appropriated for such personnel in all its departments and decided that since the present narcotic act was similar to the Federal Narcotic Act and a substantial compliance with the federal act would satisfy the requirements of the state act that no additional appropriation was needed to carry on the duties imposed by the state act.

In view of the above, it is the opinion of this department that all reasonable and necessary ex-

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penses incurred in the enforcement of the provisions of the act relating to narcotic drugs shall be paid from the general appropriation made to the State Board of Health for general expenses. Further, that all duties placed upon members of the State Board of Health, its officers, agents and representatives by the provisions of the narcotic act are to be borne by the present personnel .

Respectfully submitted,

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APPROVED:

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RCS:JMW