HOTELS: Board of Health has no authority to require fire escapes on fireproof hotels in Kansas City.

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Dr. H. F. Parker
State Board of Health
Food & Drug Division
Jefferson City, Missouri

Gentlemen:

This Department is in receipt of your request for an opinion which reads as follows:

> "Your Department on July 5, 1939, rendered an official opinion which held that all hotels having over two stories must be provided with steel or iron fire escapes. We would like your opinion as to whether, under this ruling, this Department may refuse a license to or close a hotel in Kansas City which is more than three stories high, but does not have outside fire escapes."

Section 13084, R. S. Mo. 1929, provides:

> "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 ac-

cess 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."

Under the above statute the Food and Drug Commissioner may close a hotel when said hotel does not comply with the provisions of Chapter 93, Article VII, which deals with the inspection of hotels, common inns and boarding houses.

Section 13096, R. S. Mo. 1929, which is a part of Article VII, provides as follows:

> "Every hotel that is more than three stories high shall be provided with one hall or more on each floor extending from one outside wall to the other, and at each end of such hall or halls shall be equipped with an iron fire escape on the outside of the building, connecting with openings on each floor above the first. Said escape shall be fastened and secured with landings not less than six feet in length and three in width, guarded by an iron railing not less than three feet in height. Such landing shall be connected by iron stairs not less than two feet wide and with steps of not less than six inches tread, placed at an angle of not more than forty-five degrees and protected by a well secured handrail on both sides and reaching to within twelve feet of the ground with a drop ladder twelve inches wide reaching from the lower platform to the ground. Such fire escapes shall be sufficient if a perpendicular iron ladder shall be used instead of the stairs: Provided, such iron ladder is placed at the extreme outside of the platforms and at least three feet away from the wall of the building; and provided, said ladder is equipped with round iron rounds not more than

> fifteen inches apart. The way of egress to such fire escapes shall at all times be kept free and clear of all obstructions of any and every nature, and at every opening to every fire escape a red light shall be kept burning at night. Storm windows and storm doors shall be considered an obstruction for the purpose of this chapter, and such way of egress shall at all times be kept unlocked. There shall be posted and maintained in a conspicuous place in each hall and in each guest's room, except the halls and rooms on the ground floor of such hotel, a printed notice in characters not less than two inches high, reading, 'Fire escapes are indicated by red lights:' Provided, however, that none of the provisions of this section shall apply to and be binding on hotels of fireproof construction situated in cities now having fire and building ordinance regulations, and which are erected and maintained in compliance with such fire and building ordinances." (Underscoring ours).

The above statute provides that all hotels of more than three stories shall have outside iron fire escapes except those hotels of fireproof construction which are situated in cities having fire and building ordinances and which were erected and maintained in compliance with such ordinances. A reading of the ordinances of Kansas City discloses that that city had fire and building ordinance regulations when the law was enacted in 1917 and it still has such regulations. ("Building Code", Ordinance No. 54234).

Therefore, it is apparent that since Kansas City has fire and building ordinance regulations and if a hotel has been erected and is maintained in compliance with such fire and building ordinance regula-

tions, then that part of Section 13096 which provides all hotels of more than three stories shall be provided with iron outside fire escapes does not apply, and the Food and Drug Commissioner would have no authority to refuse a license or to close such hotel. However, if a hotel in Kansas City is not of fireproof construction and has not been erected and maintained in compliance with the fire and building ordinance regulations, then the Food and Drug Department of the State Board of Health has jurisdiction in seeing that the provisions of Section 13096 are complied with.

The previous opinion rendered by this Department on April 5, 1939, relied upon Section 13757, R. S. Mo. 1929, which is the general section requiring fire escapes for all buildings, including hotels. Since the rendition of that opinion, the Supreme Court of Missouri, in the recent case of Collins v. Twellman, 126 S. W. (2d) 231, has held that section 13757 in so far as it relates to hotels, has been repealed by section 13096 and that in determining what fire escapes a hotel must have, Section 13096 must be looked to exclusively.

Therefore, in so far as the opinion of July 5, 1939, is contrary to the conclusion of this opinion, then so much of that opinion is hereby overruled.

CONCLUSION

It is, therefore, the opinion of this Department that the State Board of Health has authority to close a hotel of over three stories in Kansas City because the hotel has no outside fire escapes, if said hotel is not of fireproof construction and was not

erected and is not maintained in compliance with the fire and building ordinances. However, the State Board of Health has no authority to close a hotel of over three stories because of the lack of outside fire escapes, if said hotel is of fireproof construction and was erected and is maintained in compliance with the fire and building ordinance.

Very truly yours,

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Assistant Attorney General

APPROVED:

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AO'K:RV