

BOARD OF HEALTH: Commissioner of Health is under no statutory duty to post bond before entering upon the duties of his office.

July 17, 1941

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Mr. Arens  
Executive Secretary  
Executive Offices  
Jefferson City, Missouri

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Dear Sir:

This is in reply to your telephone inquiry for an opinion from this department upon the following questions:

1. Is the Commissioner of Health required by statute to give a bond?
2. If no statutory requirement exists, should the Governor of the State of Missouri require such a bond?
3. If such a bond were required, what would be its conditions?

From an examination of Chapter 57, Article 1, R. S. Missouri, 1939, we find that Section 9744 provides as follows:

"The Governor, by and with the advice and consent of the Senate, shall appoint a Commissioner of Health, who shall hold his office for a term of four years, and who shall be a physician in good standing and of recognized professional and scientific knowledge and a graduate of a reputable medical school, and shall have been a resident of the State for at least five years next preceding his appointment, and in making such appointment there shall be

no discrimination made against the different systems of medicine that are recognized as reputable by the laws of this State. The Commissioner of Health shall be subject to removal from office for cause by the Governor at his pleasure. The compensation of the Commissioner of Health shall be five thousand dollars (\$5000) per annum. He shall also receive traveling and other expenses necessarily incurred in the performance of his duties. The Commissioner of Health as hereby constituted shall assume all the rights, powers, privileges and duties heretofore conferred by law upon the Secretary of State Board of Health heretofore authorized by law, which office is hereby abolished. Where any law refers to the Secretary of the State Board of Health as heretofore constituted, same shall, after the passage of this law, be construed as referring to and meaning the Commissioner of Health as hereby and herein constituted."

A further examination discloses no statute requiring the Commissioner of Health to post a bond before entering upon the discharge of his duties.

Therefore, in the absence of such a statute, it is the opinion of this office that the Commissioner of Health is not required, as a matter of law, to post such a bond, and may enter upon the performance of his duties without the giving of such a bond.

Now, turning to the second and third questions, we are confronted with the general proposition that the Legislature has in its wisdom conferred upon the Executive Branch of State Government the power to make numerous appointments, and in nearly all instances has provided that the persons so appointed shall first post a bond, and the Legislature has gone farther in each instance and set forth the conditions

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of such bond. In these instances, of course, it is incumbent upon the person appointed to one of the offices requiring such a bond to fulfill the requirements of the statute. On the other hand, where the Legislature has not seen fit to provide and require a bond, and there does not exist a statutory duty upon the person appointed to a particular office, as is the case of a person appointed to the office of Commissioner of Health, then we do not see how the person who has the appointing power, namely, the Governor of the State of Missouri, in this particular instance, could as a matter of statutory right require the giving of a bond, and further, in the absence of a statute setting forth what the conditions of the bond should be, we do not see what precedent the Governor could follow in setting forth conditions for a bond which was not contemplated or provided by statute.

Therefore, we are of the opinion that if the Governor of the State of Missouri required a bond, it would be without the contemplation of the statute, and whatever terms and conditions were incorporated in the bond would have to be designated by him, which would make the terms and conditions fall outside of any statutory requirement.

It is our opinion, therefore, that the Commissioner of Health is under no statutory duty to post a bond before entering upon the duties of his office.

Respectfully submitted

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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