

STATE BOARD OF HEALTH: Has no legal duty to make laboratory tests for individuals or officials in matters not affecting the public health.

September 11, 1941



Dr. James Stewart
State Health Commissioner
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an official opinion under date of August 25, 1941 upon the question submitted by your office, in substance as follows:

"As to whether the State Laboratory of the Board of Health could be used for an analysis of a medico-legal nature for the testing of blood specimen of man killed in accident for the presence of alcohol, upon the request of a prosecuting attorney."

Most public health laws are a constitutional and proper exercise of the police power of the State, and the powers conferred on the Board of Health and State Health Commissioner in order to enable them to perform their important functions in safe-guarding the public health should receive a liberal construction as held by the Supreme Court in State ex rel. Horton vs. Clark, et al 9 SW (2d) 635. Nevertheless, the State Board of Health and State Health Commissioner are creatures of statute and their powers and duties are generally limited by the legislative enactments. See Ruling Case Law, Vol. 12 Page 1268.

Among the statutes setting forth the powers and duties of the State Board of Health and State Health Commissioner are:

Section 9735 R. S. Missouri 1939 which provides for the creation of the State Board of Health and provides for its powers and duties and which states that the State Board of Health is: " * * * "

to safeguard the health of the people of the state, counties, cities, villages, and towns," and "to study causes and prevention of diseases and prevention of contagion, etc. * * *"

Section 9288 R. S. Missouri 1939 provides that it shall be the duty of the State Board of Health or its Secretary (Commissioner) " * * * to make bacteriological tests and other scientific analyses and investigation when requested by the health supervisor or the superintendents of the state eleemosynary institutions in caring for the health of the patients in any of said institutions."

Section 9751 R. S. Missouri 1939 provides that the State Board of Health shall in making and enforcing rules and regulations for the maintenance of a safe quality of drinking water dispensed to the public: " * * * to collect samples of and analyze drinking water dispensed to the public when requested by municipalities, corporations or individuals * * *" upon payment of fee for said analyses.

We find no statutory provision making it the duty of the State Board of Health or the State Health Commissioner or the State Board of Health Laboratory to make tests or analyses of a medico-legal nature for individuals or officials. Unless the laboratory tests or analyses requested are for the safe-guarding of the public health or the promotion thereof or required in the necessary administration of the office of the State Health Commissioner in performing his duties and functions for the State Board of Health authorized by statute or in caring for the health of patients in state eleemosynary institutions, then any such laboratory tests made by the State Board of Health Laboratory would be purely voluntary on the part of the State Health Commissioner.

CONCLUSION

It is, therefore, the opinion of this department that there is no legal duty imposed on the State Board of Health, the State Health Commissioner or State Board of Health Laboratory to make laboratory tests of a medico-legal nature unless they be required for the safe-guarding of the public health of the citizens of the State or in connection with necessary duties and functions required by statute of the State Board of Health or State Health Com-

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missioner. So it would necessarily follow that the State Board of Health Laboratory has no legal duty under the law to make laboratory tests of a blood specimen of a man killed in accident for the presence of alcohol.

Respectfully submitted,

Assistant Attorney-General

APPROVED:

VANE O. THURLO
(Acting) Attorney-General