

BOARD OF HEALTH:

Persons failing to obtain license from the State Board of Health are guilty of misdemeanor under Section 4794, R. S. Missouri, 1939.

TOURIST CAMPS AND RESORTS:

February 4, 1942

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Dr. James Stewart
State Health Commissioner
Jefferson City, Missouri

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Dear Sir:

This will acknowledge receipt of your letter of January 6, 1942, which is as follows:

"Since the enactment of the State Resort Law in 1939, this department has made inspection of each resort in this State at least annually. In most instances at least two inspections have been made of each resort during each calendar year. Following each inspection a comprehensive report has been submitted to the operator of the resort listing features not in compliance with State Board of Health regulations and containing recommendations that should be carried out in order that such regulations would be complied with.

"To date many of the resorts in this State have failed to provide the recommended improvements with the result that our regulations are being flagrantly violated. Such establishments have not been licensed by the Secretary of the State Board of Health, but practically without exception, have continued to operate even though license renewal had been refused.

"I feel that many of the establishments constitute a distinct public health menace. I further feel that such establishments offer unfair competition to the proprietor who has voluntarily or by reason of our activities provided all possible public health protection for his patrons.

"I request that you advise me as to what action the State Health Commissioner should take concerning resorts which have not complied with the minimum requirements of this Board.

"I have been advised that inasmuch as the resort law does not include a penalty clause, the law is not enforceable. In our opinion the resort law is an amendment to previously enacted Hotel laws and the penalty clause contained therein would also apply to the amendment.

"It is requested, therefore, that you advise me whether or not the resort law may be construed to include the provision of penalty for violation. It is further requested that whether or not the resort law is deemed to include provision of penalty for violation, we be advised if such penalty provision or other power to close such establishments is provided under the general regulation powers granted to the State Board of Health."

Section 9955, R. S. Missouri, 1939, contains the authority of the State Board of Health relative to tourist camps, cabins or resorts. This section is, in part, as follows:

"The State Board of Health is empowered and it is hereby made their duty through their deputies to have inspected, at least annually and as often as shall be necessary, for the proper regulation and sanitation thereof, all tourist camps, cabins or resorts of whatever kind kept, used, maintained or advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests in which two or more cabins, whether in combination or under separate roofs, are furnished for the accommodations of guests. For this purpose the said inspectors shall have the right of entry and access thereto at any reasonable time.

"To carry out the provisions of this law the State Board of Health shall be empowered to promulgate such rules and regulations as they deem necessary for the proper cleanliness and sanitation of said tourist camps, cabins or resorts and for the proper regulations of water supplies in connection therewith.

"No person shall open or conduct a tourist camp, cabin camp or tourist resort in this State without procuring a permit from the Secretary of the State Board of Health for such tourist camp, cabin camp or resort and after the passage and approval of this law, the fees contained in subsection 'd' shall be due and payable to the State Board of Health and thereafter all permits shall be issued as of June 1st of each year."

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As you state in your letter, the Legislature, at the time the above section was passed, did not provide any express penalty to be attached in the event the operator of a tourist camp or resort failed to comply with the rules adopted by the Board to insure the proper cleanliness and sanitation of such camp or resort.

We do not think that any of the penalty provisions contained in Article VI, Chapter 58, R. S. Missouri, 1939, relating to hotels can be made applicable to tourist camps or resorts. The only general penalty section contained in that Article is Section 9951 and, by its own terms, it is confined to the "owner, proprietor or agent of such hotel." Section 9949, R. S. Missouri, 1939, is an express penalty section, providing for certain punishment upon failing to comply with the preceding section, No. 9948, which section, by its own terms, applies only to hotels. Section 9953, R. S. Missouri, 1939, provides a penalty for hindering and obstructing an inspector in the discharge of his duty under the article, but by its own terms that section is confined to hotels.

Section 9931, R. S. Missouri, 1939, defines what shall constitute a hotel and clearly the resort and tourist camp defined in Section 9955 do not fall within the scope of that definition, and for that reason the penalty sections, heretofore mentioned, cannot be made applicable to tourists camps or resorts.

However, this legislative oversight is not fatal to the powers of the State Board of Health with respect to compelling compliance with the rules and regulations. The Legislature, in enacting Section 9955, expressly gave the State Board of Health power to promulgate rules and regulations deemed necessary for the proper cleanliness and sanitation of tourist camps and resorts. Said section also provides that "no person shall open or conduct a tourist camp, cabin camp or tourist resort in this State without procuring a permit from the Secretary of the State Board of Health for such tourist camp, cabin camp or resort." Under the broad powers granted to the State Board of Health, it would no doubt have authority to refuse to issue such license to the operator of such a camp or resort, who had refused to comply with the Board's regulations. From your

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opinion request it is apparent that the Board of Health has refused to issue licenses to those failing to comply.

With that being the situation, the terms of Section 4794, R. S. Missouri, 1939, are brought into play. That section provides:

"If any person shall carry on or transact any business or occupation without license therefor, when such license is required by any law of this state, he shall be deemed guilty of a misdemeanor, and when no other punishment is prescribed for such offense, be fined in any sum not exceeding one hundred dollars or be imprisoned in the county jail not exceeding three months, or both."

The terms of this statute are clear and there is no doubt that a person operating a tourist camp, cabin camp or resort without procuring a license from the State Board of Health is guilty of a misdemeanor and subject to a fine of not exceeding one hundred dollars or imprisonment in the county jail or both.

CONCLUSION.

It is, therefore, our opinion that, under the terms of Section 4794, R. S. Missouri, 1939, the State Board of Health, acting through the county prosecuting attorney, has ample authority to compel compliance with its regulations relative to tourist camps, cabin camps or resorts.

APPROVED:

Respectfully submitted,

VANE C. THURLO
(Acting) Attorney General

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