

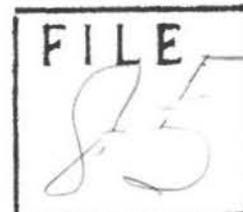
HEALTH COMMISSIONER:

The salary of the Health Commissioner of the State of Missouri is \$5,000.00 per year.

June 3, 1942

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Doctor James Stewart
State Health Commissioner
Jefferson City, Missouri



Dear Dr. Stewart:

Your request for an opinion has been referred to me. This request is as follows:

"Was Section 9024 R.S. 1929 (now Section 9744), as amended (Laws 1933, page 269), intended to supplant the right of the State Board of Health to fix the salary of the State Health Commissioner as now constituted. If so, would Section 9024 as amended repeal Section 9041 R.S. 1929 (now Section 9761) by implication as to the salary of the Secretary of the State Board of Health. In other words is the State Health Commissioner entitled to receive a salary of \$7,400.00 per annum or \$5,000.00 per annum?"

In order to arrive at the law in this matter, I think that the history of this matter should be gone into.

Section 9019 R. S. Mo., 1929, empowered the State Board of Health to select a secretary. This section is as follows:

"The meetings of the board shall be in January and July of each year, and at such other times as the board shall deem expedient. The meeting in January of each year shall be held in the City of

Jefferson, and four members shall constitute a quorum. They shall choose from their number a president, vice-president and a secretary, and they may adopt rules and by-laws for their government, subject to the provisions of this article."

Section 9020 R. S. Mo., 1929 provided for the duties of the secretary. It is as follows:

"The secretary shall perform such duties as may be prescribed by the board and this article; he shall receive a salary, which shall be fixed by the board; he shall also receive his traveling and other expenses in the performance of his official duties. The other members of the board shall receive no compensation for their services, but their traveling and other expenses while employed on the business of the board shall be paid. The president of the board shall certify the amount to the secretary, and the traveling and other expenses of members, and on presentation of his certificate the auditor of state shall draw his warrant on the state treasurer for the amount."

Section 9024 R. S. Mo., 1929, provided for the appointment for a commissioner of Health by the Board of Health. The section reads as follows:

"A commissioner of health may be selected by the board, who shall be a physician skilled in sanitary science and experienced in public health administration. It shall be his duty to enforce the rules and regulations of the board and he shall submit to the state board of health an annual report with his recommendations."

These statutes remained in force and effect until 1933, at which time the Legislature repealed Sections 9020 and 9024, Article 1, Chapter 52, R. S. Mo., 1929, and in lieu thereof passed two new sections known as Sections 9020 and 9024 Laws of Missouri 1933. These sections provide as follows:

"The Commissioner of Health shall perform such duties as may be prescribed by the board and this article. The members of the board shall receive no compensation for their services, but their traveling and other expenses while employed on the business of the board shall be paid. The president of the board shall certify the amount to the Commissioner of Health, and the traveling and other expenses of members, and on presentation of his certificate the auditor of state shall draw his warrant on the state treasurer for the amount."

"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 Act, be construed as referring to and meaning the Commissioner of Health as hereby and herein constituted."

Also in force in 1929 was Section 9041 which was re-enacted in 1939 and became Section 9761, R.S. Mo., 1939. This Section provides as follows:

"The secretary of the state board of health shall have supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board, and shall act as state registrar of vital statistics. As secretary he shall receive an annual salary at the rate of twenty-four hundred dollars, payable monthly. The state board of health shall provide for such clerical and other assistance as may be necessary for the purpose of this article, who shall serve during the pleasure of the board, and may fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. Suitable apartments shall be provided by the custodian of the capitol for the bureau of vital statistics and the state board of health in the state capitol at Jefferson City, which shall be properly

equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this article."

In 1935, Section 9020 Laws of Missouri 1933, was repealed and a new section enacted in lieu thereof, which section was to be known as Section 9020 Laws of Missouri 1935. This section directs as follows:

"The commissioner of health shall perform such duties as may be prescribed by the board and this article. Each member of the board shall receive as compensation for his service the sum of Ten Dollars (\$10.00) for each day engaged in this service and all legitimate and necessary expense incurred while employed on the business of the board. The president of the board shall certify the amount to the commissioner of health and the per diem, traveling and other expenses of members and on presentation of this certificate the auditor of state shall draw his warrant on the state treasurer for the amount."

In 1939, Section 9019 R. S. Mo., 1929, was re-enacted and became 9739 R. S. Mo., 1939. Section 9020 Laws of Missouri 1935, was re-enacted and became Section 9740 R. S. Mo., 1939; Section 9024 Laws of Missouri 1933, was re-enacted and became Section 9744 R. S. Mo., 1939 and as stated above, Section 9041 R. S. Mo., 1929 was re-enacted and in 1939 became Section 9761 R. S. Mo., 1939. These are the sections which have reference to the Secretary of the Board of Health and Commissioner of Health.

From a reading of all of these Sections of the Statutes, we find the following: The Commissioner of Health now performs the duties formerly performed by the Commissioner and the Secretary of the Board of Health; the office of Secretary has been abolished; the salary of the Commissioner is \$5,000.00

per year. Where the term "Secretary of the Board of Health" is mentioned the term "Commissioner" shall be substituted; and in Section 9761 R. S. Mo., 1939, it is provided that the Secretary of the Board of Health is to receive \$2,400.00 salary as such. Does the latter provision regarding \$2,400.00 salary remain in effect and inure to the benefit of the Commissioners of Health?

We feel that the intention of the Legislature should be examined in order to reach an intelligent conclusion. Such intention is of great importance in construing statutes and is as much a part of such provisions as the written words themselves. See 26 Mo. Dig. "Statutes" Key number 180. Going back to 1929, there was at that time two officers, to wit, the Secretary of the Board of Health and the Commissioner. In 1933, the office of Secretary of the Board of Health was abolished and the duties pertaining to that office were then assumed by the Commissioner. At that time the salary of the Commissioner was definitely set at \$5,000.00. Therefore, it would seem that the intention of the lawmakers was to put all of the duties involved in the hands of one officer and that a salary be set, commensurate with the amount of work necessary; and it was clearly the intention of the Legislature to abolish the office of Secretary of the Board of Health.

Now what effect does the abolishment of the Secretary's position have on Section 9761 R. S. Mo., 1939. Citing the first few lines of such section, we find the following:

"The secretary of the state board of health shall have supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board, and shall act as state registrar of vital statistics. As secretary he shall receive an annual salary at the rate of twenty-four hundred dollars, payable monthly.* * * * *"

It will be noted that the Secretary of the Board of Health is to have supervision over the bureau of vital statistics and is to act as state registrar of vital statistics.

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Following the statute, the Commissioner of Health shall then become the registrar and have supervision over the bureau of vital statistics. However, the Secretary was to receive \$2,400.00 for salary as such secretary, but not for supervising the bureau of vital statistics or for acting as state registrar. Therefore, in view of the fact that he was to receive "such sum" as secretary, it seems that when such office was abolished, that the salary of such secretary was also abolished. Does not the Commissioner have a salary set out by statute at \$5,000.00? Should we then say that he should draw his own salary and also that of another officer whose office has been abolished? We think not. Neither do we think it was the intention of the Legislature, to allow the Commissioner to receive one sum as his salary and then draw another sum as head of one of the bureaus in a department where he is the supervisor.

Furthermore, there is now an officer known as the Director of the bureau of vital statistics. He receives the salary of \$3,000.00 annually. There are other bureaus in the Health Department all of which have Directors or Heads. Still in none of them does the Commissioner receive remuneration for any duties he has which are connected therewith. Why should the commissioners receive a sum as supervisor of one department and not receive anything as supervisor of the others? Obviously, the Legislature meant that the Secretary of the Board of Health was to receive \$2,400.00 per year, as such, and when they abolished the office, the salary ceased.

CONCLUSION

Therefore, it is the opinion of this Department, that when the Legislature abolished the office of Secretary of the State Board of Health and provided that the Commissioner of Health was to perform the duties formerly performed by such Secretary and that he should receive an annual salary of \$5,000.00, both of which actions were made at approximately the same time, said Legislature intended that the provision regarding salary of the Secretary in Section 9761 R. S. Mo.,

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1939, was to be abolished along with the office, since it was the pay he was to receive as Secretary of the Board and not as supervisor of the Bureau of Vital Statistics or as State Registrar of Vital Statistics. In other words, his salary is to be \$5,000.00 instead of \$7,400.00 since he has no right to the additional stipend of \$2,400.00 as provided in Section 9761 R. S. Mo., 1939.

Respectfully submitted

JOHN S. PHILLIPS
Assistant Attorney General

APPROVED:

ROY MCKIPTRICK
Attorney General

JSP:AW