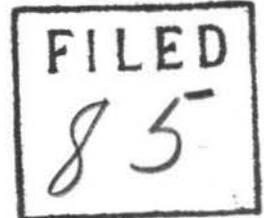


STATE BOARD OF HEALTH: Has authority to construct public sewage disposal facilities but all contracts for such construction must be made by State Purchasing Agent.

July 21, 1942.



Dr. James Stewart  
State Health Commissioner  
Jefferson City, Missouri

Dear Dr. Stewart:

The Attorney-General wishes to acknowledge receipt of your letter of July 15, 1942, in which you requested an opinion from this department. This request, omitting the caption and signature, is as follows:

"This Board has presented to the Federal Works Agency several applications for allotments of funds for the sanitation of private and semi-public water supplies, private and semi-public sewage disposal facilities and for the collection and disposal of garbage and refuse in areas immediately adjacent to cantonment areas in Missouri. The Federal Works Agency program includes the operation of such sanitation projects. The project applications provide for operating entirely with Federal funds and it is not proposed to use any state funds for the construction of these facilities.

"When the application is approved and the funds are allotted it is intended by the Federal Works Agency that the State Board of Health shall, with the Federal funds, construct or contract to construct these facilities. We are in receipt of a letter from the Regional Engineer's office of the Federal Works Agency raising a legal Question concerning the authority of this Board to construct or contract to construct the proposed sanitary facilities. It is

respectfully requested, therefore, that you provide me with an opinion as to whether or not the State Board of Health has legal authority to provide these facilities in this manner."

The powers and duties of the State Board of Health are set out in Section 9735, R. S. Mo. 1939, which section reads as follows:

"It shall be the duty of the state board of health to safeguard the health of the people in the state, counties, cities, villages and towns. It shall make a study of the causes and prevention of diseases and shall have full power and authority to make such rules and regulations as will prevent the entrance of infectious, contagious, communicable or dangerous diseases into the state. It may send representatives to public health conferences when deemed advisable, and the expenses of such representatives shall be paid by the state as provided in this chapter for expenses of the members of the state board of health."

Also, Section 9735a of the Laws of Missouri, 1941, at page 370, respecting the use of Federal funds by the State Board of Health, provides as follows:

"The State Board of Health is hereby directed to comply with the provisions of any act of Congress providing for the distribution and expenditure of funds of the United States appropriated by Congress for Health purposes and to comply with any of the rules or conditions made by the United States Public Health Service. The Children's Bureau or any other Federal agency in regard to health funds distributed to the states, and to comply with any of the rules and conditions made by said services or bureaus or other branches of the United

States Government acting under the provisions of the Federal law in order to secure for the State of Missouri funds allotted to this state by the United States Government or (for) health purposes under the provisions of such acts of Congress, relating to health; said funds shall be received by the State Treasurer and deposited in separate funds to be known as the United States Public Health Title VI fund, the Venereal Disease Control fund, the Children's Bureau fund, and any other fund specially designated by a Federal Agency for the use of the State Board of Health for health purposes, and to be paid out by the State Treasurer on requisitions drawn by the executive officers of the State Board of Health on a warrant of the State Auditor. Said funds being allotted to the State of Missouri for health purposes by the Federal Government the General Assembly shall appropriate the same to the use of the State Board of Health, under such provisions as are set out for the reception and use of funds by the Federal Government."

As can be seen from the statutes cited above, the State Board of Health has considerable powers conferred upon it and the general rule seems to be that the powers that are conferred upon such board should receive liberal construction. See State ex rel. Horton v. Clark et al., 320 Mo. 1190, 9 S. W. (2d) 635.

The duties of the State Board of Health are of an administrative character and as long as such board exercises a reasonable discretion it is free to act. See State ex rel. Goodier, 195 Mo. 551, 93 S. W. 928. The apparent intention of the Legislature with regard to the State Board of Health seems to be that as long as such board does not abuse its powers and as long as they are acting in the interest of the general health of the public of Missouri, they have practically

July 21, 1942.

unlimited powers along that line.

As to the power to construct or contract to construct the facilities mentioned in your opinion request, we will cite you to Chapter 105, R. S. Mo. 1939, entitled "State Purchasing Agent." Under this chapter in order that there be a contract to construct such facilities it will be necessary that all agreements or contracts made with any individual be made on the part of the State through the office of the State Purchasing Agent and shall not be made by the State Board of Health itself.

Conclusion

It is the opinion of this Department that the State Board of Health has the power to construct private and semi-public sewage disposal facilities for the collection and disposal of garbage and refuse in areas immediately adjacent to cantonment areas in Missouri, but that any contract for the construction or purchase of supplies must be made by the State Purchasing Agent of Missouri, and not the State Board of Health.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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