

BOARD OF HEALTH: Convalescent, nursing, shelter or boarding home under the provisions of Senate Bill 142, Laws of Mo., 1941, p. 368.

August 13, 1942.

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James Stewart, M. D.
State Health Commissioner
Jefferson City, Missouri

Dear Dr. Stewart:

The Attorney-General wishes to acknowledge receipt of your letter of August 7th requesting an opinion from this department. Such request, omitting caption and signature, is as follows:

"This Board is not carrying out a program to license and otherwise regulate convalescent and nursing homes in accordance with Senate Bill 142 as enacted by the State Legislature in the last general assembly of that body. Senate Bill 142 defines these homes as follows:

"Section 2: Definitions.--The term "convalescent", "nursing", "shelter", "lodging", and "boarding" home for the aged, chronically ill or incurables shall mean any place in which three or more aged, chronically ill or incurable persons, not related by blood or marriage to the owner, operator or manager of said place, are received, kept and provided with food, or shelter and care for hire or compensation, however paid; provided that nothing in this Act shall apply to any institution established, maintained or operated by the State or any county, city, town or village thereof.'

"We have encountered certain establishments which in our opinion could or could

not be included in this program depending upon the interpretation of the clause 'for hire or compensation, however paid' as contained in the statute.

"These questionable establishments operate basically as follows:

"1. Homes operating primarily from endowment or contribution but accepting as gratuity that compensation a guest wishes to make, such as a grant, a life insurance policy, etc., but where no such compensation is pre-requisite to entrance.

"2. Homes operating primarily from endowment and contribution but requiring a flat rate entrance fee for each individual. These fees vary from \$100 to \$500 depending upon the home. This entitles guests to remain in the home for the remainder of their lives with the home assuming all responsibilities for care, including burial. The entrance fee cannot be decreed as adequate compensation for services rendered but definitely is required for entrance.

"3. Homes operated by a lodge to which a member has access upon reaching an established age by reason of having been a member of the lodge in good standing, for which payment of dues is, of course, pre-requisite.

"Our experience indicates these homes to be providing acceptable care for their guests, and in our opinion, it was not the intention of the legislature to include these establishments even though some were not included in the specified exceptions.

"I request, therefore, that you advise me whether or not, in your opinion, these homes come within the provisions of Senate Bill 142, and whether or not the State Board of Health is obligated to license and otherwise regulate these homes."

Your request apparently is whether or not the three specific types of establishments set out in your letter are subject to the provisions of Senate Bill 142 as passed by the General Assembly in 1941, Laws of Missouri, 1941, page 368. We will first cite you to Section 1 of said bill, which is as follows:

"No person shall establish, maintain, operate or conduct a convalescent, nursing, shelter or boarding home for aged, chronically ill or incurable persons, within this State, without having first obtained a license so to do from the State Board of Health of Missouri. The word 'person' as used in this Act shall include members of any firm, partnership or association and a corporation and any or all of the officers, managers or board of directors thereof. Provided, however, that no nursing home or sanatorium which is conducted in conformity with the tenets of any well-recognized church and in which the treatment provided is solely by prayer or spiritual means as an exercise of religious freedom, shall be required to obtain a license under the provisions of this act."

The language of this statute is very broad and undoubtedly includes any or all persons who shall "establish, maintain, operate or conduct a convalescent, nursing, shelter or boarding home for aged, chronically ill or incurable persons."

We will next cite you to Section 2 of said bill, entitled "definitions," which provides as follows:

"The term 'convalescent', 'nursing', 'shelter', 'lodging', and 'boarding' home for the aged, chronically ill or incurables shall mean any place in which three or more aged, chronically ill or incurable persons, not related by blood or marriage to the owner, operator or manager of said place, are received, kept and provided with food,

or shelter and care for hire or compensation, however paid; provided that nothing in this Act shall apply to any institution established, maintained or operated by the State or any county, city, town or village thereof."

It can be seen from a study of the above provisions that any person, association, firm, partnership or corporation operating an establishment such as you speak of in your letter "for hire or compensation," is governed by the provisions of this statute.

Now as to the intention of the Legislature in enacting such statutes: In Section 1, aforesaid, of this bill there is an exception made to this statute which refers to an establishment in this general class conducted in conformity with the tenets of any well-recognized church and in which the treatment provided is solely by prayer or spiritual means. This would infer that when the bill was passed that the Legislature considered exceptions to said bill, but the only exception made by the Legislature is the one mentioned above. It appears to this department, therefore, that it was the intention of the Legislature that no other exceptions should be made to this enactment. Otherwise, such exceptions would have been made.

The only other matter to be considered is whether or not an establishment in this general class is operating such establishment for "hire or compensation." There is no doubt about the first and second class of homes specified in your letter, since they both contemplate the payment of acceptance of a fee or other compensation. However, in the third class which you have specified and which is set out above, where there is no fee or compensation to be paid as a prerequisite for admission into such home, we are of the opinion that such home does not come under the provisions of Senate Bill 142. In this class of establishments the home is merely an incident to a lodge and is not in the business of providing shelter or food to the clients who are kept in such home.

Conclusion

Therefore, it is the opinion of this department that all establishments of the kind which you specify in class 1 and

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class 2 of your request are subject to the provisions of Senate Bill 142, due to the fact that they contemplate the acceptance of fees or gratuities as a prerequisite for admission into their home. However, we are further of the opinion that class 3, referring to homes operated by lodges, does not come under the provisions of Senate Bill 142 since there is no payment of fees or the acceptance of gratuities as a prerequisite to admission into such establishments.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG