

COMMISSIONER OF HEALTH: Not entitled to \$10 per day as secretary, nor \$10.00 per day as member of board in addition to his annual compensation of \$5,000.00.

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March 1, 1943

Hon. Forrest Smith  
State Auditor  
Jefferson City, Missouri



Dear Sir:

This is to acknowledge your letter of recent date, in which you request an opinion from this department. Your letter reads as follows:

"Dr. James Stewart who is Secretary of the State Board of Health and receives a monthly compensation as Secretary, was recently appointed as a member of the State Board of Health by Governor Donnell and confirmed for this appointment by the Senate in Special Session.

"Last week the State Board of Health met and Dr. Stewart has submitted a bill for \$10.00 per diem for attending this meeting.

"In the past, the Secretary of the Board has always attended the meetings of the State Board, but since he is on a salary as Secretary, has never presented a bill for per diem.

"I would like an opinion from your office as to whether Dr. Stewart as both Secretary of the State Board of Health and a member of the State Board of Health would be entitled to his monthly salary as Secretary and at the same time his 'per diem' as a member of the Board of Health in attending the monthly meetings of the Board."

Your question pertains to the office of Secretary of the State Board of Health and you state that Dr. James

Stewart receives a monthly compensation as such secretary. We assume, however, since the office of Secretary of the State Board of Health has been abolished by statute that you mean that he receives a salary as Commissioner of the State Board of Health. The Secretary of the State Board of Health was abolished by the General Assembly in the 1933 Session (Laws of Missouri 1933, p. 269). The section abolishing the office of secretary is Section 9744, R. S. Mo. 1939, and is as follows:

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

It will be noted by this section that the duties theretofore performed by the Secretary of the State Board of Health prior to the effective date of the amendment of 1933 are, under the statute, now assumed by the Commissioner of Health and, the Commissioner shall assume, in the language of the statute, "all

the rights, powers, privileges and duties heretofore conferred by law upon the secretary of the State Board of Health heretofore authorized by law" and, further, the section provides that the Commissioner of Health shall receive \$5,000.00 per annum.

In this state, therefore, we do not now have a statutory secretary of the State Board of Health, as known prior to the amendment of 1933, and all the duties are now performed by the Commissioner of Health. Since the office of secretary of the State Board of Health was abolished by law all compensation formerly received by the secretary of the State Board of Health "went out the window" with the office.

Your question is, as we understand it, "Does the secretary receive \$10.00 per day additional as secretary, for attending the meetings of the Board of Health?" The rule is stated briefly in 46 C. J. 1016, Sec. 234:

"Where an office is abolished, the incumbent has no further right to compensation."

(Citing: Orahood v. Denver, 41 Colo. 172, 91 P. 1116; Gilbert v. Paducah, 115 Ky. 160, 72 S. W. 816; Wittmer v. New York, 50 App. Div. 482, 64 NYS 170; Jones v. Shaw, 15 Tex. 577; Meissner v. Boyle, 20 Utah 316, 58 P. 110; Hall v. State, 39 Wis. 79.)

There is no provision in the statute for the \$10.00 per diem compensation for the Secretary of the State Board of Health for the very good reason that there is now no such office as Secretary of the State Board of Health.

The rule is stated in Nodaway County v. Kidder, 344 Mo. 795, 129 S. W. (2d) 857, 1. c. 860, as follows:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is

confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

You further desire to know whether the Commissioner of Health is entitled to receive \$10.00 per day as a member of the State Board of Health, that is, the \$10.00 for each day engaged in the service on the Board, as allowed to each member of the Board of Health. We find no statute which authorizes or permits the Commissioner of Health to serve as Commissioner of Health and also be a member of the board and receive the \$10.00 per day as a member of such board. We do not think that the law contemplates that one person shall hold both the office of Commissioner of Health and receive the \$5,000.00 annual salary as such and be a member of the Board of Health and receive \$10.00 per day in addition thereto for such services, because under Section 9740 R. S. Mo. 1939, the Commissioner of Health "shall perform such duties as may be prescribed by the board and this article" (Article 1, Chapter 57, R. S. Mo. 1939) and he would be performing duties as Commissioner of Health prescribed by himself as a member of the board. The duties of one would be incompatible with the duties of the other.

#### CONCLUSION

It is, therefore, the opinion of this department that the Commissioner of Health is, under the law, entitled to

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receive \$5,000.00 per annum as Commissioner of Health and is not entitled to receive \$10.00 per day for performing duties as secretary of the board, nor \$10.00 per day as a member of the Board of Health.

Respectfully submitted,

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
ATTORNEY-GENERAL

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