

DIVISION OF MENTAL DISEASES:
CONTRACT WITH MUNICIPALITY
FOR HOSPITAL FACILITIES AND
SERVICES:

(1) The Division of Mental Diseases cannot enter into a contract with the Board of Education to furnish teaching services for the St. Louis State Training School. (2) Said Division cannot enter into contract with the City of St. Louis, a municipal corporation for services of interns and resident physicians of the St. Louis City Hospital to be rendered to the St. Louis State Hospital.

May 27, 1949

Dr. Orr Mullinax, Director
Division of Mental Diseases
State of Missouri
Department of Public Health and Welfare
State Office Building
Jefferson City, Missouri



Dear Dr. Mullinax:

This will acknowledge receipt of your letter requesting an opinion of this department. Your letter is as follows:

"In connection with the operation by the state of the St. Louis State Training School and the St. Louis State Hospital newly acquired by deed from the City of St. Louis, it seems that it will be to the advantage of both institutions for us to enter into certain contracts with the Board of Education of the City of St. Louis and the City of St. Louis itself for certain services to be rendered to these institutions.

"Specifically, (1) the Board of Education has heretofore furnished the teachers for the St. Louis Training School which is the same institution as the present St. Louis State Training School now owned by the State of Missouri and operated by the Division of Mental Diseases under the supervision of the Department of Public Health and Welfare. These teachers, however, will lose certain rights now enjoyed by them under and by virtue of the school laws of the state if they separate themselves from the Department of Education of the City of St. Louis and they are consequently refusing to do so. The said Board of Education has heretofore been furnishing the said school with certain equipment essential to the operation of the school, which equipment it is apparently about to remove from the school. (2) For the course of

Dr. Orr Mullinax

the operation of the St. Louis City Sanitarium, now known as the St. Louis State Hospital, certain laboratory and post-mortem services essential to the operation of the hospital were furnished by the City of St. Louis which services are not now available to the St. Louis State Hospital. (3) Heretofore in the course of the operation of the St. Louis City Sanitarium the Hospital Division of the City of St. Louis supplied to it the services of certain interns and resident physicians of the St. Louis City hospital. The services of these interns and resident physicians would greatly facilitate the efficiency of the St. Louis State Hospital but at present are not available to the institution.

"With the foregoing facts in mind, we desire and request an official opinion from you as to whether or not in view of Section 7403, Laws of Missouri, 1947, or any other law or statute, the Division of Mental Diseases of the Department of Public Health and Welfare can enter into the following contracts:

"(1) A contract with the Board of Education of the City of St. Louis to furnish the services of teachers to the St. Louis State Training School, said teachers to be under the joint contract and supervision of the said Board of Education and the Division of Mental Diseases of the Department of Public Health and Welfare and can such teachers if so furnished by said board and under its control be exempt from the provisions of the State Merit system Act and can such contract include the furnishing by said board of the equipment essential to the operation of the school?

"(2) Can the Division of Mental Diseases contract with the City of St. Louis for the furnishing of such laboratory and post-mortem services as said City has heretofore furnished the St. Louis City Sanitarium?

"(3) Can the Division of Mental Diseases contract with the City of St. Louis for the services of interns and resident physicians of the City Hospital of the City of St. Louis?

"If these contracts can be entered into by the Divi-

Dr. Orr Mullinax

sion of Mental Diseases it will greatly simplify the problems arising out of the operation of these institutions."

Your above quoted letter makes it clear that the St. Louis State Training School now operated by the State of Missouri through your division was recently owned and operated by the City of St. Louis, and that when so owned and operated, the school used teachers and equipment furnished by the Board of Education of the City of St. Louis, and that the St. Louis State Hospital now owned and operated by the State, through your department, when owned and operated by the City of St. Louis, used certain laboratory facilities of the St. Louis City Hospital, and also availed itself of the services of interns and resident physicians of said hospital.

You desire an opinion as to whether it is possible under the law for your division to contract with the City of St. Louis, a municipal corporation, with a view to procuring a continued use by the St. Louis State Hospital of these facilities and services, and to contract with the Board of Education of the School District of the City of St. Louis for the furnishing of teachers and facilities to the St. Louis State Training School.

Section 7403 (b), Laws of Missouri, 1947, page 402, cited by your department in the opinion request reads as follows:

"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, * * * for the * * * operation of any * * * facility; or for a common service; provided, that the subject and purpose of any such contract or cooperative action made and entered into by such municipality or political subdivision, shall be within the scope of the powers of such municipality or political subdivisions. If such contract or cooperative action shall be entered into between a municipality or political subdivision, such contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides." (Underscoring ours.)

Section 7403 (a), Laws of Missouri 1947, page 402, declares

Dr. Orr Mullinax

that the term "Political Subdivision" for purposes of the Act includes cities and school districts. We are therefore of the opinion that this includes both the City of St. Louis and the St. Louis School District represented by the Board of Education of the City of St. Louis. Having established the general proposition that your division may contract with political subdivisions of the State such as the City of St. Louis and the St. Louis Board of Education, we must next consider the question as to whether it can enter into a valid contract with the City of St. Louis and the Board of Education of St. Louis for the services of certain employees of these two political subdivisions.

We are of the opinion that this cannot be done, and we believe that this is true for the reason that as heretofore said by the Supreme Court of Missouri in Springfield vs. Clouse, 206 S.W. (2nd) 539:

"* * * The whole matter of qualifications, tenure, compensation and working conditions for any public service involves the exercise of legislative powers."

The following is a rather extensive quotation from the Supreme Court opinion last cited:

"* * * Under our form of government, public office or employment never has been and cannot become a matter of bargaining and contract. State ex rel. Rothrum v. Darby, 345 Mo. 1002, 137 S.W. 2nd 532; see also Nutter v. City of Santa Monica, 74 Cal. App. 2nd 292, 168 P. 2nd. 741, loc.cit. 745; Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So. 2nd 194, loc.cit. 197, 165 A.L.R. 967; Mugford v. Mayor and City Council of Baltimore, 185 Md. 266, 44 A.2d 745, loc.cit. 747, 162 A.L.R. 1101. This is true because the whole matter of qualifications, tenure, compensation and working conditions for any public service, involves the exercise of legislative powers. Except to the extent that all the people have themselves settled any of these matters by writing them into the Constitution, they must be determined by their chosen representatives who constitute the legislative body. It is a familiar principal of constitutional law that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void. 11 Am. Jur. 921, Sec. 214; 16 C.J.S. Constitutional Law, 133; A.L.A.

Dr. Orr Mullinax

Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947. If such powers cannot be delegated, they surely cannot be bargained or contracted away; and certainly not by any administrative or executive officers who cannot have any legislative powers. Although executive and administrative officers may be vested with a certain amount of discretion and may be authorized to act or make regulations in accordance with certain fixed standards, nevertheless the matter of making such standards involves the exercise of legislative powers. Thus qualifications, tenure, compensation and working conditions of public officers and employees are wholly matters of lawmaking and cannot be the subject of bargaining or contract. * * * * *

We are, therefore, of the opinion that since the whole matter of personal services and all matters pertaining thereto are particularly within the jurisdiction of the legislature to be administered by the administrative branch of the Government in strict accordance with legislative enactments, it would be impossible for the administrative branch of Government without specific authority from the legislature embodied in some statute to delegate the matter of control of such personal services by entering into a contract whereby it is provided that work within the peculiar province of either contracting party shall be done by the employees of the other contracting party.

CONCLUSION

We are, therefore, of the opinion that you cannot enter into a contract with the City of St. Louis whereby it is agreed that the services of doctors and interns employed by the City Hospital of the City of St. Louis shall be made available to your division in the performance of the duties to be performed by the St. Louis State Hospital, and we are of the further opinion that you cannot contract with the Board of Education of the City of St. Louis to furnish teachers and teaching services in the St. Louis Training School, a State Institution.

Respectfully submitted,

APPROVED:

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