

DIVISION OF HEALTH: Orders for alterations to be made in buildings used as hotels, to be given to the owner, proprietor or agent in charge of said buildings, when such building does not meet the requirements of a building used for a hotel by Missouri law, can only be given by the Director of the Division of Health or by a deputy, who may be the deputy of food and drug administration, when such deputy is vested with such authority by the Director of the Division of Health. The closing order for a hotel to be given following non-compliance with the order of alterations in the building mentioned above, can only be given by the same person under the same conditions as noted above; that is to say, the Director of the Division of Health or by a deputy invested with such authority by the Director of the Division of Health.

August 20, 1954

James R. Amos, M.D.
Director, Division of Health
Department of Health and Welfare
Jefferson City, Missouri



Dear Sir:

Your recent request for an official opinion reads as follows:

"I am attaching, herewith, a letter from one of our District Food and Drug Representatives concerning the Jefferson Hotel at Joplin, Missouri.

"You will note that Mr. Stewart Tatum, Prosecuting Attorney for Jasper County, has raised a question concerning the authority of our Food and Drug Inspectors to issue a closing order for a hotel as provided under Chapter 315, Revised Statutes of Missouri, 1949.

"Mr. Tatum is apparently basing his decision, concerning this matter, upon Section 315.020, which states in the last sentence of the section: 'If at the expiration of the required notice such owner or agent of the building so occupied refuse or fail to comply with said sections mentioned in such notice then it shall be the duty of the Director of the Division of Health to close said hotel until such requirements are complied with'.

"It has always been our understanding that the Director of the Bureau of Food and Drugs and the District Representatives of the Bureau of Food and Drugs are acting under the orders and directions of the Director of the Division of Health and are, therefore, agents acting in the name of the Director of the Division of

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Health, and that notices issued by them in accordance with the requirements of Section 315.020 would be sufficient to satisfy the requirement of said section. We would, therefore, appreciate an official opinion as to the legality of the District Food and Drug Inspectors issuing work orders for the repairs or alterations to be made on such hotels, and the subsequent issuance of a closing order as provided for in Section 315.020.

"It would of course be physically impossible for the Director of the Division of Health to personally inspect each hotel within the state of Missouri and issue a closing order in person for those who fail to comply with the requirements of Chapter 135. It seems to me that it was the intent of the legislature to provide for the delegation of such authority and powers to responsible district personnel.

"Since this same question has arisen concerning the delegation of authority to close food handling establishments under Section 196.190 through 196.265, particularly Section 196.240, 196.245 and 196.250, we would like to call your attention to the fact that in the 1939 Revised Statutes, Section 9900 reads as follows: 'Any duty by this chapter imposed upon the state food and drug commissioner may, with equal force and authority, be performed by any deputy state food and drug commissioner, or any inspector of state food and drug department, as directed by the state food and drug commissioner. (R.S. 1929, Sec. 13051).'

"It is, therefore, my belief that it was the intent of the legislature in both the case of a food handling establishment and a hotel to permit the delegation of authority to district representatives to issue work orders or instructions for the correction of sanitation defects and to close those establishments who are endangering the health and welfare of the people of the state.

"In the event our present method of operation is not legal, please indicate the correct legal procedure."

The letter to which you refer, and which you enclosed, reads:

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"I have just returned from a visit with Stewart Tatum, Prosecuting Attorney, Jasper County, in regard to the Jefferson Hotel, Joplin, Missouri.

"Mr. Tatum states that the law reads that all orders for changes to be made as well as closing orders must come from the Director and therefore he is unable to act. He is more than willing to take up the matter after the notices and closing orders along with the time lapse as required by law is done.

"To review our record of which you have had copies of each are as follows:

"February 4, 1954 inspection and work order issued.

Sect. 315.080, 315.110, 315.120
Sect. 315.180 and post rates

"May 20, 1954 inspection and work order amended to include

Sect. 315.090

"June 10, 1954 letter to Mr. Ben Davis, operator, pointing out the following violations of hotel law:

Sect. 315.040, 315.090, 315.120, 315.180

"June 28, 1954 registered letter pointing out time work order due and the duty of Prosecuting Attorney.

"July 15, 1954 inspection and closing order issued.

"Mr. Ben Davis is a very cooperative man and wants to close the hotel, but he also wants the landlady to fix the building or release him from his lease. He has hired a good lawyer and the lawyer has advised him that if we got a circuit court order to close then he would have ground. The lawyer also stated that the circuit court closing order was the only legal closing order and that he didn't believe our order was legal.

"Since the Prosecuting Attorney has ruled as such, I think a review of our whole position in this matter should be 're-hashed.' Mr. Tatum stated another

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example of this is in the liquor control section of the law which reads something like our section of the hotel law. Would you please review the law and state the course of action to be taken now?"

Section 315.020 RSMo 1949, to which you refer, reads as follows:

"It is hereby made the duty of the director of the division of health to inspect or cause to be inspected, at least once annually and as often thereafter as he may deem necessary, every hotel in the state, and for that purpose he shall have the right of entry and access thereto at any reasonable time. Whenever, upon such inspection, it shall be found that such business and property so inspected is not being conducted, or is not equipped in the manner and condition required by the provisions of sections 315.010 to 315.230, it shall thereupon be the duty of the director of the division of health to notify the owner, proprietor or agent in charge of such business, or the owner or agent of the building so occupied, of such changes or alterations as may be necessary to effect a complete compliance with the provisions of sections 315.010 to 315.230. It shall thereupon be the duty of such owner, proprietor or agent in charge of such business, or such owner or agent of the building so occupied to make such alterations or changes as may be necessary to put such building and premises in a condition that will fully comply with the provisions of sections 315.010 to 315.230; all permanent repairs and alterations to the building and premises to be made by the owner thereof; provided, however, that thirty days' time after receipt of such notice shall be allowed for conforming to the requirements of sections 315.010 to 315.230. If at the expiration of the required notice such owner or agent of the building so occupied refuse or fail to comply with said sections mentioned in such notice, then it shall be the duty of the director of the division of health to close said hotel until such requirements are complied with."

As you state in your letter, it is not to be supposed that the law contemplates that the duties of hotel inspection imposed upon the director of the division of health are to be discharged by him personally, and the underlined portion of Section 315.020, supra, makes provision for the actual inspection to be done by deputies.

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The question which you have directed to us is whether these deputies may be district food and drug inspectors?

Section 192.090 RSMo 1949, states that the director of the division of health may delegate to a deputy, who may be the deputy food and drug inspector, responsibility for the administration of the laws pertaining to the inspection of hotels. That section reads:

"The division of health shall exercise such powers and duties pertaining to inspection of hotels, inns and boarding houses as is imposed by law, and such powers and duties may be delegated by the director of the division of health to a deputy who may be the deputy of food and drug administration and who, under the director, shall be chiefly responsible for the administration of laws, orders and findings relating to the inspection of hotels, inns and boarding houses."

It seems to us that the above section clearly gives the director of health power to delegate to the deputy of the food and drug administration power to administer all of the laws pertaining to the inspection of hotels, and that would, of course, include work orders and closing orders.

We believe, therefore, that work and closing orders may be issued only by the Director of the Division of Health, or by a deputy, who may be the deputy food and drug administration, if the Director of the Division of Health delegates such authority to such deputy.

CONCLUSION

It is the opinion of this department that the orders for alterations to be made in buildings used as hotels, to be given to the owner, proprietor or agent in charge of said building, when such building does not meet the requirements of a building used for a hotel by Missouri law, can only be given by the Director of the Division of Health or by a deputy who may be the deputy of food and drug administration, when such deputy is vested with such authority by the Director of the Division of Health.

It is our further opinion that the closing order for a hotel to be given, following non-compliance with the order for alterations in the building mentioned above, can only be given by the same person under the same conditions as noted above; that is to say, the Director of the Division of Health or by a deputy invested with such authority by the Director of the Division of Health.

James R. Amos, M.D.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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