HOTELS: Definition of an apartment hotel and apartment house.
FOOD AND DRUG: First is subject to Sections 9923 to 9954, R. S. Mo. 1939, if the building has ten rooms or more, and the operator furnishes lodging services and retains right of access at all times. Apartment house not subject to hotel regulatory laws, if leased to tenants who have exclusive control of rooms.

October 14, 1949

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Honorable C. F. Adams, M.D.
Acting Director of Division of Health
Jefferson City, Missouri

Dear Sir:

This is in reply to your recent request for an official opinion on the following questions:

> "1. 'We would like to know if an apartment hotel comes under the definition "hotel" and should be licensed and inspected under the state hotel laws, Sections 9923 to 9954.'
>
> "2. 'We would like to know if apartment house comes under the definition "hotel".'"

The definition of buildings to be licensed as hotels, set out in Section 9931, R. S. Mo. 1939, is as follows:

> "That every building or other structure, kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, in which ten or more rooms are furnished for the accommodation of such guests, whether with or without meals, shall for the purpose of this article be deemed a hotel, and upon proper application the food and drug commissioner shall issue to such above described business a license to conduct a hotel: Provided, that it shall be unlawful for the owner of any such building or other structure to lease or let the same to be used as a hotel until the same has been inspected and approved by the food and drug commissioner.

An apartment hotel has been defined as meaning a hotel where apartments are rented for fixed periods of time either furnished or unfurnished to the occupants of which the keeper of such buildings supplies certain services.

One of the leading cases on this question is Woods v. Western Holding Corporation, 77 Fed. Supp. 90. This case was tried before Judge Reeves of the Federal District Court of the Western District of Missouri in 1948, to determine whether or not the properties at Ward Parkway known as Casa Loma East and Casa Loma West were hotels and not subject to the Housing and Rent Act of 1947, enacted by the Congress of the United States. Said buildings were each nine stories high and had sixty-five units. Each had mail service and laundry service, telephone and desk service, furnishing use and upkeep of furniture by the operator of the building and a limited bell boy service. No uniformed bell boys were furnished but the elevator boy served as bell boy in certain cases. The witnesses for the operating corporation testified that in Kansas City there are three classes of hotels first, the regular commercial or transient hotel devoting the greater part of its business to the traveling public. Second, the apartment hotel, and, third, the family hotel. The witnesses testified that the properties in question were apartment hotels in their opinion and that they accommodated many permanent guests but that they also made provisions for transient guests. The evidence in this case also proved that they were classified by the state regulatory authorities as a hotel and paid an occupation tax as a hotel.

Judge Reeves held that the properties were clearly hotels under the definition set forth in Section 9931, R. S. Mo. 1939, and that the object of this law was to enable the State of Missouri to exercise proper supervision over housing accommodations of this character. The controlling factors in this case were the fact that pass keys to the apartments were in the control of the operating corporation and that in no case was the occupant in exclusive domination as in the case of tenants, but in every way the occupants sustained a precise relation to the operator as any guest would sustain to the operator of a hotel, whether it be commercial, family or otherwise. The court held in this case that the properties were not subject to the rent control provision because they were hotels and hotels were exempt from the provisions of the Act.

The case of Marden vs. Radford, 84 S.W.(2d) 947, 229 Mo. App. 789, discusses this question in great length because the question of liability arose with respect to an occupant of a kitchenette apartment. If the occupant was a lodger and not a tenant then the owner of the property would be liable to the occupant for the owner would owe a duty to the lodger of safe occupancy.

In this case there was no common or public dining room in the building, and there were no bell boys. Neither maid nor laundry service was furnished. The occupant cleaned the rooms in the apartment and occupied the apartment as a family home and the family meals were cooked therein. The occupants of course had a key to their apartment but the operator of the building also had a key to the apartment. The apartments were rented upon

a monthly or yearly basis. The court held that the term lodger has been defined as a person who occupies a part of another's house, one who for the time being has his home at his lodging place, one who has leave to inhabit another man's house, one who has the right to inhabit another man's house, one who inhabits a portion of a house of which another has the general possession and custody (paragraph 6, page 954) "the term is also defined as a person who lives and sleeps in a place, a person whose occupancy is a part of a house and subordinate to and in some degree under the control of a landlord or his representatives. A lodger lodges with someone who has control over the place where he lodges."

This case holds:

> "The chief distinction between tenant and a lodger apparently rests in the character of the possession. A tenant has the exclusive legal possession of the premises, he and not the landlord being in control and responsible for the care and condition of the premises. A lodger, on the other hand has merely a right to the use of the premises, the landlord retaining the control and being responsible for the care and attention necessary and retaining the right of access to the premises for such purpose." (Sec. 7, page 955.) (Underscoring ours.)

The operators of the building in this Marden v. Radford case had complete control over the lobby and egress from and ingress to the building. The operators furnished the gas, water, light and telephone service to the plaintiff's apartment and was in control of the means by which this service could be cut off from plaintiff's apartment at any time. The operator owned the silverware and the linens in theapartment.

The court held in this case that the building was an apartment hotel and that the occupant was a lodger because the occupant had the use, without the actual and exclusive possession and control, of the premises in question. To have been a tenant he must have the exclusive possession and control.

The court held in this case that when a person thus in possession of a building rents to another a room or rooms and furnishes to such others the gas, the light, the water, the heat and the telephone service in the building, a lobby, an office and a staff of servants to furnish various services to the occupants of the various units and remains personally, through his manager, in general possession and control of the entire building then it is a hotel or apartment hotel.

A California court said:

> "A lodger is one who has no interest in the realty, but who occupies part of a tenement which is under the control of another. When the owner of the realty engages in the business of supplying accommodations to lodgers, he is conducting a business different from that of letting property to tenants." (Edwards v. City of Los Angeles, 48 Cal. App. 62.)

Our laws, Sections 9931, 9955, 9854.1 (R. S. Mo. 1939) requires a license and compliance with health and safety regulations of all persons who engage in the business of supplying lodging accommodations. The burden of proof is upon the owner or operator of a building furnishing lodging accommodations to the public to establish that the occupants of the building are tenants with definite leasehold rights.

Therefore, the answer to your question of what would constitute an apartment hotel and whether or not it would be subject to the control and licensing under the state hotel laws would depend upon whether or not the building operators retained control over the apartments or rooms so that they had access to them at any time to service the rooms or to inspect them for any purpose and it would not make any difference whether they advertised the building as a hotel or apartment hotel or apartment house provided they had ten rooms or more, as required by the statute, in the building.

An apartment house has been defined in Austin v. Richardson (Texas) 288 S.W. 180, as follows: (l.c. 181)

> "A building in which separate and distinct suites of rooms are occupied by one or more persons for residence purposes; the occupant or occupants of each such suite of rooms having exclusive management and control of and dominion over the rooms so occupied.* * *"

Therefore, an apartment house in which the occupants had <u>complete</u> and <u>exclusive control</u> over the apartments with a lease from the owner or operator and over which the owner or operator surrendered control and possession during the term of the lease, and which could not be entered by the owner or operator of the building without the permission of the occupant of the apartment would be an apartment house and not subject to the state hotel laws. But in the same building it may be operated as a hotel, a rooming or lodging house, and an apartment house as separate institutions or in combination under the same management. Such operation does not make the occupants of the building of one class. The relationship of the owner with some might be that of hotel keeper; with others, that of landlord

and tenant; with still others that of lodging house keeper depending upon the contract with each particular guest and the character of each particular occupant.. (See Cedar Rapids Investment Co. v. Commodore Hotel Co., 205 Iowa, 736, 218 N.W. 510, 56 A.L.R. 1098. If ten rooms or more in such a building were operated for guests or lodgers, then it would be subject to hotel regulations.

CONCLUSION

An apartment hotel as defined above comes under the definition of hotel and should be licensed and inspected under state hotel laws, Sections 9923 to 9954, R. S. Mo. 1939. An apartment house as defined above would not come under the definition of hotel and would not be subject to said requirements. The test as to whether or not it is an apartment hotel or an apartment house depends upon the service rendered to the occupants and whether or not the occupants are in exclusive control and possession of the apartments. If they are not in exclusive control and possession, and receive lodging services, then the building they occupy would be subject to hotel regulations and license if it contained ten rooms or more, used as set forth in Section 9931, R. S. Mo. 1939.

Respectfully submitted,

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