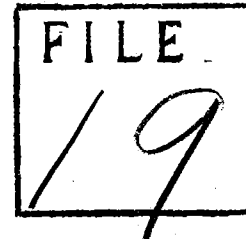


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HEALTH, BOARD OF: Board of Health by regulation may quarantine person
COUNTIES: with communicable venereal disease; sheriff must serve
writ of isolation but is not entitled to fee; person
quarantined must pay cost thereof, but if indigent,
cost must be paid by the county.

October 10, 1941

Honorable James V. Conran
Prosecuting Attorney
New Madrid County
New Madrid, Missouri



Dear Sir:

This Department is in receipt of your request for
an official opinion which reads as follows:

"I enclose a letter and a bulletin from
the State Board of Health to the Sheriff
of this County. They have asked the
Sheriff to pick up the person named in
said letter, confine her to the County
Jail and treat her for Syphilis. For
which she has refused to be treated.

"We would like to know whether or not
the Sheriff has this authority and if
so, who if anyone will pay his costs in
picking up these cases and boarding them.
The mileage and board bill will amount
to a tremendous amount if this ruling is
strictly enforced.

The letter which accompanies your request is from
Dr. Herbert S. Miller, District Health Officer of the State
Board of Health, and is as follows:

"We are sending you, under separate cover,
a copy of Book IV and Supplement of the
Missouri Public Health Manual containing
the authority for quarantining a person in
order to prevent the spread of Venereal
Disease.

"M H 27 year old white Female,
Address % P C P has been
reported by Dr. J. J. K of that
city as havin syphilis in an infectious
state. She refuses to take treatment and
as a protection to the community she
should be treated or placed in quarantine."

A reading of the above letter from Dr. Miller discloses that he does not ask that the person in question be confined in the county jail, but only that she be placed in quarantine. However, we will answer your request as submitted.

Section 9736, R. S. Mo. 1939, which deals with the State Board of Health, provides as follows:

"The board shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate rules, regulations and procedures to prevent the spread of those diseases and to determine the prevalence of said diseases within the state."

Section 9745, R. S. Mo. 1939, provides:

"At the first regular February term of the county court in each county of the State after this article becomes effective and at the regular February term of said county court every year thereafter, said court may appoint a reputable physician, as a Deputy State commissioner of health for a term of one year. In case of a vacancy in the office of the Deputy State Commissioner of Health of the county, the county court may at its next regular term of court appoint a reputable physician for the unexpired term. But the power of deciding whether or not such a deputy state health commissioner will be appointed shall be vested in the county court. If a county court of any county decides to appoint a deputy health commissioner, as empowered in this law, it shall agree with said commissioner as to the compensation and expenses to be paid for such services which amount shall be paid out of the county treasury of the county."

Section 9747, R. S. Mo. 1939, reads as follows:

"It shall be the duty of the deputy state commissioners of health for the counties to enforce the rules and regulations of the state board of health throughout their respective

counties outside of incorporated cities which maintain a health officer who has been appointed a deputy state commissioner of health as provided for in section 9745. The deputy state commissioners of health for incorporated cities of less than 75,000 population shall enforce the rules and regulations of the state board of health within their respective cities. Any deputy state commissioner of health who neglects or refuses to perform his duties as required by this article shall be deemed guilty of a misdemeanor. In case of dereliction of duty or refusal to act on the part of the deputy state commissioner of health of any county, the state board of health may at their discretion declare the office of deputy state commissioner of health for that county vacant."

Section 9748, R. S. Mo., 1939, is as follows:

"All rules and regulations authorized and made by the state board of health in accordance with this chapter shall supersede as to those matters to which this article relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the state board of health which may be necessary for the particular locality under the jurisdiction of such local authorities."

The State Board of Health in accordance with the powers granted by the statutes, has enacted the following rules and regulations:

"Section 1, Division B.

"Diseases Communicable and Dangerous to Public Health?

Chancroid
Gonorrhea
Syphilis

"In addition to the general measures enumerated in the foregoing sections, the following rules and procedures shall apply to diseases enumerated in this section:

* * * * *

QUARANTINE MAY BE ESTABLISHED TO PREVENT THE SPREAD OF VENEREAL DISEASES.

"

Any person suspected of having any disease enumerated in Division B, Section I, Book IV, who fails to submit himself or herself to examination or treatment as ordered by the district or local health officer and who fails to report regularly for treatment until released as cured by said health officer, shall be subject to quarantine as hereinafter provided.

"In establishing quarantine, the district or local health officer shall designate a place or define the limits of the area in which the suspect shall be quarantined and no other person, except the attending physician, shall enter or leave said quarantined area without permission of the proper authorities.

"No one shall have the authority to terminate said quarantine except the officer responsible for it and only after the disease has become non-infectious as determined by said health officer or his authorized deputy.

"Anyone released from quarantine but not cured shall sign a statement agreeing to place himself or herself under the medical care of a physician or clinic and remain under treatment until finally released by the health officer."

This Department in an opinion rendered to Dr. Harry F. Parker, State Health Commissioner, on November 16th, 1939, approved the above regulations and held them constitutional and legal. Since that time there has appeared an annotation in 127 A. L. R. 424, in which it is stated, "Persons having communicable venereal diseases may be quarantined in the exercise of the police power and in order to protect public health." Numerous cases in support of this rule are cited.

Therefore, we believe that it is settled that a person suffering from a venereal disease may be quarantined in this State. However, as to the place of quarantine we call your attention to the statement in 29 C. J., p. 255, par. 47, which is as follows:

"While a person may be quarantined in other than his place of residence the mere determination that a disease is dangerous and communicable does not empower a health officer to refuse isolation in the home by quarantine and placard notice thereof and to commit the diseased person to a hospital. The danger must be such as to justify the quarantine isolation in a place other than the home; but, where this is the case, the person infected has no right to be interned in the locality in which he may reside; and the proper place for the confinement is a hospital and not a jail or penitentiary. * * *"

In view of the above statement we are of the opinion that a person may not be quarantined in a county jail, but again point out that from the contents of the request of the State Health Officer, such procedure was not demanded by the State Board of Health.

As to the question of whether a sheriff is required to serve a warrant or writ of isolation, we refer you to Section 13138, R. S. Mo. 1939, which reads as follows:

"Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by justices of the peace; and he shall attend upon all courts of record at every term, and in all cities which now have or shall hereafter have a population of three hundred thousand inhabitants or more, he may employ counsel to aid and advise him in the discharge of his duties and to represent him in court, and may fix the compensation to be paid such counsel, not, however, to exceed the sum of two thousand dollars per annum: Provided, the whole compensation is paid out of the fees of his office of sheriff; and the court shall have power to audit and allow such compensation as other fees and expenses are allowed by law."

This identical question was raised in the case of Nyberg v. Board of Com'rs. of Sedgwick County, 216 Pac. 282, in which the Supreme Court of Kansas said:

"The sheriff is the state's chief executive officer in his county (State v. McCarty, 104 Kan. 301, 305, 179 Pac. 309, 3 A. L. R. 1283), and he is the only officer possessing the necessary authority outside of his county. The statute provides that the sheriff shall serve and execute all process, writs, precepts, and orders issued or made by lawful authority and to him directed.

Gen. Stat. 1915, Sec. 2749. The courts are not the only sources of process directed to sheriffs. County treasurers issue tax warrants, the Governor issues warrants for fugitives from justice, and the order here involved was issued by competent authority, within the meaning of the statute.

"Special provision not having been made for payment of expense incurred in executing isolation orders, the general provision of the statute relating to payment by the county commissioners of the sheriff's expenses applies. Gen. Stat. 1915, Sec. 4714. This is no hardship to the county, because the service is rendered in a matter of quarantine, the expense of which falls ultimately on the county."

However, it is the rule in Missouri that a sheriff is not entitled to a fee unless the same is expressly allowed by statute. State ex rel. v. Brown, 146 Mo. 401, 47 S. W. 504. An examination of Section 13411, R. S. Mo. 1939, which sets forth the fees of sheriffs, discloses that there is no fee allowed for the serving of a process of this nature. Therefore, it is presumed the Legislature intended this service to be done without compensation and the sheriff must serve this warrant or writ of isolation but is entitled to no fee for doing the same.

The next question which arises, and which is the main point in this opinion, is - On whom falls the burden of paying the expenses of the quarantine? By expenses of the quarantine, in so far as this opinion is concerned, means the cost of maintaining the person so quarantined during the period of isolation and does not deal with other costs such as medical services etc.

Under the statutes there is no provision as to how and by whom this expense is to be paid. While Section 9758, R. S. Mo. 1939, might at first reading allow this cost to be paid by the county or city, further research discloses that that is not the case. This section provides as follows:

"The county court or city council in any such city shall have power to appropriate money out of the current revenues of the county or city, as the case may be, for the purpose of carrying out the provisions of this article."

When this law was passed in 1915 (Laws of Missouri, 1915, page 299), Section 9758, supra, provided that the money may be spent by the county court or the city council "for the purpose of carrying out the provisions of this act." The act in question included the two previous sections and dealt with a public health nurse and the right to disinfect public and private places. In the revision of 1919 the Revision Committee changed the word "act" in the section to read "article." However, a change by a revision committee of a word does not change the purpose of the act and the original act must be looked to in order to ascertain its scope and effect. 59 C. J. 894, Par. 493.

The general rule in regard to the payment of expenses during the quarantine is succinctly stated in the leading case of Dodge County v. Diers, 69 Neb. 361, in which it is said:

"The mere fact that they are quarantined for public safety does not relieve persons who are able to support themselves of the duty of so doing."

However, if it appears that the person so quarantined is unable to support herself during said period, then a different question arises. Section 9590, R. S. Mo. 1939, provides as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 9591, R. S. Mo. 1939, reads:

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no

other person required by law and able to maintain them, shall be deemed poor persons."

The duties imposed by these statutes have been held mandatory. *State ex rel. Gilpin v. Smith*, 96 S. W. (2d) 40, 1. c. 41; 48 C. J. 433.

The majority rule seems to be that where a person is placed in quarantine and is unable to pay the cost of maintenance during the period thereof that a county with a mandatory poor law must bear the cost of such maintenance.

In *Copple v. Commissioners of Davie County*, 50 S. E. 574, the Supreme Court of North Carolina had before it the question of the payment of the costs of maintenance of an indigent person during a quarantine. The court said, 1. c. 575:

"So far as municipal obligation is concerned, it is accepted doctrine that the care and support of the indigent and infirm is a matter of statutory provision. In *Smith v. Colerain*, 9 Metc. 492, it is said by Chief Justice Shaw, 'It has been too often decided to be now questioned that the liability of towns to support poor persons is founded upon and limited by statute, and is not to be enlarged or modified by any supposed moral obligation.' Where a statute imposes such duty on a county in general terms, leaving the method and extent of relief to the judgment and discretion of local officers and agents, in order to make a binding pecuniary obligation on the county there must be a contract to that effect, express in its terms, or the service must be done at the express request of the officer or agent charged with the duty, and having the power, to make contracts concerning it. The statutes of our state on this subject are of this character. By section 707, subd. 21, and section 3540, of the Code, the county commissioners are directed to

provide for the maintenance, comfort, and well ordering of the poor. By section 3541 it is provided that paupers who may become chargeable to the county shall be maintained at the county poorhouse, or at such place or places as the board of commissioners may agree upon. The general duty is here imposed of providing for the poor. The place, method, and extent of relief are vested in the judgment and discretion of the county commissioners. * * *

This rule is recognized in Dodge County v. Diers, supra, and Kollock v. Stevens Point, 37 Wisc. 348.

Therefore, we are of the opinion that an indigent person quarantined by an order of the State Board of Health must be cared for by the county of which she is a resident.

Conclusion

It is, therefore, the opinion of this Department that the State Board of Health may by rule and regulation provide that a person having a communicable venereal disease shall be quarantined, but that said person cannot be quarantined in a county jail. It is further the opinion of this Department that if such a person is able to pay the expense of said quarantine, she must do so, but if she is an indigent and unable to pay the cost or expense, then the duty is upon the county to bear the expense.

Respectfully submitted,

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APPROVED:

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