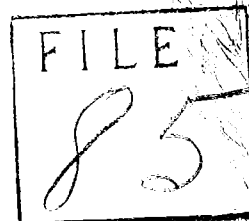


STATE BOARD OF HEALTH: NURSING SHELTERS OR BOARDING HOMES:
RULES AND REGULATIONS:

December 13, 1941

Dr. James Stewart,
State Health Commissioner
State Board of Health
Jefferson City, Missouri



Dear Doctor Stewart:

This is in reply to your letter of recent date wherein you request an opinion from this department on the following statement of facts:

"We are enclosing herewith tentative regulations prepared for adoption by the State Board of Health which are designed to regulate convalescent, nursing, shelter, lodging and boarding homes under powers and duties delegated to this Board by Sections 1 to 7, inclusive, Page 368, Laws of Missouri 1941, governing such homes.

"As State Health Commissioner, I wish to be advised whether or not, in your opinion, the enclosed regulations constitute a legal means of control of these establishments, as based upon the statutory powers of this Board. Inasmuch as the State Board of Health desires to act upon these regulations at its December 18 meeting, we would appreciate your opinion in this matter at your earliest possible convenience."

Under the act referred to in your request which is found in Laws of Missouri, 1941, p. 368, and especially under Section 3, thereof, it is provided that the application for a license to establish, maintain, operate or conduct a convalescent, nursing, shelter, lodging or boarding home for aged, chronically or incurables, shall contain such information as the State Board of Health may by law prescribe.

Also, under Section 5 of this act pertaining to the duties of the State Board of Health there is the provision that said Board of Health may promulgate such rules and regulations as it deems necessary. This section is as follows:

"The State Board of Health is empowered and it is hereby made its duty: (1) to inspect, at least annually and as often as shall be necessary, all convalescent, nursing, shelter, lodging and boarding homes for aged, chronically ill or incurable persons; (2) to grant licenses, for a period not to exceed one year, after inspection, to persons to conduct the occupation defined in this Act and may renew the same when expired and to revoke the license of such persons as fail to obey the provisions of this Act or the rules and regulations made by said Board; (3) to promulgate such rules and regulations as it deems necessary for the proper cleanliness and sanitation of said convalescent, nursing, shelter, lodging and boarding homes and for the care, maintenance and safety of the persons residing therein."

It is by virtue of the foregoing provisions of the act that you are authorized to make the rules and regulations which you propose to make. In the case of State v. Public Service Commission, 53 S. W. (2d) 868, the Supreme Court of this State held that such regulations must be reasonable and lawful. However, any rule or regulation must be within the general provisions of the act and must not be arbitrary or without a reasonable basis. With this rule in mind, we call your attention to Section 1 of your regulations pertaining to definitions. We think these definitions are limited by the provisions of Sections 1 and 2 of the act. You will note that the rules only refer to Section 1. Under Section 2 of the act you will note that it is as follows:

"The term 'convalescent', 'nursing', 'shelter', 'lodging', and 'boarding' home for the aged, chronically ill or incurables shall mean any place in which three or more aged, chronically ill or incurable persons, not related by blood or marriage to the

December 13, 1941

owner, operator or manager of said place,
are received, kept and provided with food,
or shelter and care for hire or compensa-
tion, however paid; provided that nothing
in this Act shall apply to any institution
established, maintained or operated by the
State or any county, city, town or village
thereof." (Underscoring ours)

In your definition of these terms you have left out the words underscored above. Under the authorities above stated we think the definitions of the terms defined in Section 2 must be limited by the clause "not related by blood or marriage to the owner, operator or manager of said place." In other words, we think that this clause should be inserted between the words "persons" and "are" in line 6 of Section 1 of your proposed rules and regulations.

We also suggest that the following change be made on Page 6, thereof, in Section 12, by striking out all the first sentence of said Section 12, and inserting in lieu thereof: "Each nursing home shall be under the supervision of a physician registered as required by law." With these suggested changes, it is the opinion of this department that the proposed regulations, a copy of which is hereto attached, are proper and come within the provisions of the authority granted by the act.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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