

CHIROPRACTIC BOARD
OF MISSOURI:

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The Chiropractic Board of Missouri has the authority to hire an investigator, to be paid by a legislative appropriation out of the Chiropractic Board fund, to assist the Chiropractic Board in carrying out the duty imposed on it to investigate all members of their profession who are charged with or suspected of immoral or illegal actions.

February 14, 1952

2-14-52

Honorable Vernon H. Grogan, D.C.
Treasurer, State Board of Chiropractic
Examiners
413a Court Street
Fulton, Missouri

Dear Sir:

Your request for an official opinion has this day been assigned to me to answer. You thus state your opinion request:

"As a member of the Chiropractic State Board of Examiners, I have an obligation to my profession and to the people of Missouri. Knowing something is one thing and being able to prove it is another thing. It is upon these facts that the following requests are based.

"One--Would it be legal for the Legislature to appropriate (give consent to use a given amount of available State Board Funds) a given amount of money specified for the purpose of hiring an investigator or detective?

"Two-- Would it be legal for the State Board to employ an investigator or detective to investigate and bring in new evidence against a chiropractor who has had a complaint filed against him and pay for same from fund created by the legislature for that purpose?

"Three-- Would it be legal for the board to employ an investigator or detective to investigate a chiropractor who has not had a direct complaint filed against him--- this being done because the board has reason to believe said chiropractor is violating the law?

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"Four---Could this fund be set up so as to include witness fees?"

"If at all possible would appreciate an opinion before the appropriation committee returns for committee meetings February 4th."

We would first direct your attention to Paragraph 3 of Section 331.030, RSMo 1949, which reads:

"There shall be paid by each applicant, a fee of twenty-five dollars, fifteen dollars of which shall accompany the application, and the balance of ten dollars shall be paid upon the issuance of a license. All moneys collected under the provisions of this chapter shall be payable to and collected by the division of collection in the department of revenue and shall be deposited in the state treasury to the credit of the chiropractic board fund which is hereby established. Any person failing to pass such examination may be re-examined within one year from the time of such failure without additional fee."

You are correct in assuming, as you do, that any money used by the Chiropractic Board from the fund thus set up would have to be by an appropriation act of the Legislature.

We would now direct your attention to Paragraph 1 of Section 331.060, RSMo 1949, which reads:

"It shall be the duty of the board of chiropractic examiners to carefully investigate all charges of immoral or illegal actions of anyone to whom a license to practice chiropractic in this state has been issued. Upon complaint being made to the board it shall investigate and if it deems probable cause exists for the complaint, shall furnish a copy of the complaint to the accused by registered mail, together with a notice of the time and place for the hearing of same, which shall not be less than thirty days after the depositing of said communication in the United States mail."

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The above section gives to the Chiropractic Board broad powers of investigation of members of its profession who are charged with, or who are suspected of, immoral or illegal actions. Indeed, the above section imposes upon the Chiropractic Board the duty to make these investigations.

The general question which you ask us is whether the Legislature may appropriate, out of the Chiropractic Board fund, a sum of money to be expended in paying an investigator, hired by the Chiropractic Board, for the purpose of making these investigations.

Certainly paragraph 1 of Section 331.060, supra, does not, on its face, authorize the Chiropractic Board to hire such an investigator, or the Legislature to appropriate money out of the Chiropractic Board fund for such a purpose. If, therefore, the Chiropractic Board and the Legislature do have this power, it must be by implication.

As bearing upon this question, we direct your attention to the case of State v. Wymore, 132 S.W. (2d) 979. At l.c. 987 and 988, the Court stated:

"It will not be necessary to consider the above noted conflict, for it is provided in Sec. 11316, R.S. 1929, Mo. St. Ann. Sec. 11316, p. 600, that 'the prosecuting attorneys shall commence and prosecute all * * * criminal actions in their respective counties * * *.' The section does not enter into detail about the duties of a prosecuting attorney. In this situation the rule is stated as follows:

"The duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes.' 46 C.J. Sec. 301, p. 1035.

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers

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expressly granted, or as may be fairly implied from the statute granting the express powers.' Throop's Public Officers, Sec. 542, p. 515.

"Necessary implication and intendments from the language employed in a statute may be resorted to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication'. 59 C.J. Sec. 575, pp. 972, 973; Hudgins v. Mooresville Consol. School Dist., 312 Mo. 1, 278 S.W. 769; State ex rel. Wahl v. Speer, 284 Mo. 45, 223 S.W. 655; In re Sanford, 236 Mo. 665, 139 S.W. 376."

We would also direct attention to the case of Bradford v. Phelps County, 210 S.W. (2d) 996. At l.c. 1000, the Court stated:

"Of course, the Legislature could have provided for salaries for stenographers of prosecuting attorneys in counties of the class including Phelps County, quite as have been provided by statute in counties of other classification. For example, see Laws of Missouri, 1945, pp. 574, 578, and 583, Mo. R.S.A. Secs. 12906 et seq., 12957 et seq., 13547.353 et seq. The Legislature has not done so. This does not mean the County Court of Phelps County should not, in the exercise of its discretion, make allowance for the expense of necessitous stenographic service to the prosecuting attorney. But, in the absence of legislation providing a salary or allowance for a stenographer or for stenographic service for the prosecuting attorney of Phelps County, the County Budget Law means the County Court of Phelps County has the power to make whatever allowance for stenographic service as it, in its discretion, may deem necessary with a regard to the efficiency of the prosecuting attorney's office, and to the receipts estimated to be available

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for that and other estimated expenditures, in short to approve such an estimate as will promote efficient and economic county government. To put it in another and summary way--since Prosecuting Attorney could not rely on a statute particularly providing pay for his stenographic service, he should have necessarily expected such an allowance as the County Court of Phelps County in the honest, nonarbitrary performance of its duty under the County Budget Law would make. County Budget Law, supra, particularly Sections 10912 and 10917."

At l.c. 1001, the Court stated:

"We have noticed the Legislature has seen fit to delegate to the county court discretionary powers and duties under Section 10917 of the County Budget Law--the county court can be said to be 'the agency most familiar with the fiscal affairs and financial condition of the county' (State ex rel. Dietrich v. Daues, supra; State ex rel. Dwyer v. Nolte, supra), as well as the agency most likely to soundly budget estimated receipts and expenditures to the end of efficiency and economy in county government. It seems the county court's exercise of its discretion in the performance of its statutory and discretionary duty should not be interfered with, vacated or set aside, except in a case where it is clear the county court in acting abused or arbitrarily exercised its discretion (or if such were the charge, acted fraudulently or corruptly)."

We would also direct attention to the case of Culver v. Smith, 74 S.W.(2d) 754, a case decided by the Supreme Court of Texas in 1934. At L.c. 757, the Court stated:

"We do not interpret the act as authorizing the absolute, unlimited, or unreasonable examination of the books and records required to be kept; nor the unreasonable inspection of the properties therein described. In interpreting

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the act to determine whether it confers arbitrary or unreasonable power, it must be considered in the light of the broader powers exercised by the Commission in the regulation of the petroleum industry under the Conservation Laws. When so considered the act simply provides that the Commission do the acts or things required when 'deemed necessary' and as often as deemed necessary in the enforcement of the Conservation Laws, thus invoking the administrative discretion of the Commission. By the term 'administrative discretion' is meant that the acts or things required to be done may be reached, in part at least, upon the basis of considerations not entirely susceptible of proof or disproof and at times which, considering the circumstances and the subject-matter cannot be supplied by the Legislature itself. A statute is said to confer such discretion when it refers the commission or officer for the exercise of the power to beliefs, expectations, tendencies instead of facts, the commission or officer being usually instructed to act, or to do the things required when deemed 'fit,' 'proper,' 'appropriate,' 'practicable,' 'necessary,' 'reasonable,' or like terms. This discretion includes all matters or things in which the ascertainment of a fact is legitimately left to administrative discretion which enlarges as the element of future probability preponderates over that of present conditions, the fundamental purpose of an administrative power or regulation being to fill up details which arise in the course of the performance of the act or duty specified or required. United States v. Grimaud, 220 U.S. 506, 31 S. Ct. 480, 55 L. Ed. 563; Wayman v. Southard, 10 Wheat. 1, 6 L. Ed. 253; Freund On Administrative Powers Over Persons and Property, 71."

We would also direct your attention to the case of Ravettino v. City of San Diego, 160 P. (2d) 52, a case decided in 1945 by the District Court of Appeal of the Fourth California District. At l.c. 57, the Court stated:

"In general, powers given to municipal corporations include the further power to employ such modes of procedure as are appropriate

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and necessary for their effective exercise. The delegation of power to municipal corporations, without providing the mode for carrying such power into effect, impliedly gives them the right to select lawful and reasonable means whereby that power is to be carried out. All doubts as to the propriety of means used in the exercise of an undoubted municipal power should be resolved in favor of the municipality, where there is no abuse of power or discretion. * * *

In view of the above it would appear to us that the Chiropractic Board of Missouri would have the power to hire an investigator, to be paid by a legislative appropriation out of the Chiropractic Board fund, to aid the Chiropractic Board in the discharge of the duty imposed upon it by the Legislature in paragraph 1, Section 331.060, supra, which duty is in general to investigate members of the chiropractic profession who are charged or who are suspected of immoral or illegal actions, and that the Legislature would have the power to make such an appropriation.

In our consideration of this matter, we cannot overlook what we deem to be its practical aspect. There are in the state of Missouri approximately 1250 licensed chiropractors scattered throughout the state. The Chiropractic Board consists of five members. It may be assumed that these five members were chosen to be members of the Chiropractic Board because of eminence in their profession. Being eminent, it may therefore be assumed that they are busy with their professional activities and cannot, without great personal sacrifice, devote much of their time to traveling about the state conducting investigations, nor can they be expected to do so. If, therefore, adequate investigation is to be made, it would appear that it would have to be done by a hired investigator. Furthermore, in view of the fact that the board members are generally well-known to the members of their profession, they would be greatly impeded in making a personal investigation.

The appropriation could include necessary traveling expenses and compensation to be paid witnesses who, in the opinion of the Chiropractic Board, are necessary for a full and complete hearing against members of the chiropractic profession who are charged with immoral or illegal actions. It may be added further, that the witnesses contemplated herein are only such witnesses as are requested by the Board to appear and not to any

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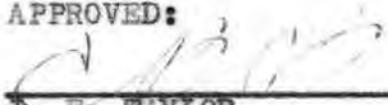
witnesses whom the accused person may desire to have present in his behalf. We may further point out that all such witnesses summoned by the Chiropractic Board will be those who voluntarily appear, since the Chiropractic Board does not have the power to obtain witnesses by subpoena. The case of State ex rel. Hurwitz, v. North, 264 S.W. 678, holds that a Board does not have the power to obtain witnesses by subpoena unless that power is by the Legislature conferred upon it.

CONCLUSION

It is the opinion of this department that the Chiropractic Board of Missouri has the authority to hire an investigator, to be paid by a legislative appropriation out of the Chiropractic Board fund, to assist the Chiropractic Board in carrying out the duty imposed on it to investigate all members of their profession who are charged with or suspected of immoral or illegal actions.

Respectfully submitted,

APPROVED:



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