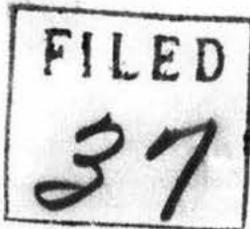


DIVISION OF HEALTH,
Power to Fix and
Increase Fees for
Services:

) The Division of Health may increase
) fees for services rendered by the
) Department for maintenance of a
) safe quality of water dispensed to
) the public, provided, such increase
) is necessary to cover the costs of
) such services.



February 8, 1952

2-8-52

Buford G. Hamilton, M. D.
Director, Division of Health
Jefferson City, Missouri

Dear Dr. Hamilton:

This is in reply to your request for an opinion of this department concerning the amendment of present regulations governing public water supplies, which request is as follows:

"Section 192.180 of the Revised Statutes of Missouri, 1949, provides that the Division of Health shall make rules and regulations for the collection of samples and analysis of water either natural or treated, furnished by municipalities, corporations, companies, or individuals to the public and shall fix the fees for any services rendered under the rules and regulations to cover the cost of the service. At the present time, this Division receives approximately \$12,000 per year in such laboratory fees. An analysis of our actual current cost of such laboratory service indicates that the cost is approximately \$20,000 per year. We are, therefore, considering a revision of our schedule of fees for the required sanitary analysis.

"Items (d) 3 and (d) 4 of Section 10 of the enclosed regulations governing the

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installation, extension, and operation of public water supplies set out the schedule of fees now in effect. It is proposed to file with the Secretary of State revised items (d) 3 and (d) 4 of Section 10 reading as follows:

"13. Ground Water Supplies. The fee for the required sanitary analysis of public water supplies of ground origin which do not require purification shall be as follows:

"Population of Cities:

Under 1,500	\$25.00 per year
1,500 - 3,000	35.00 per year
3,000 - 6,000	45.00 per year
6,000 - 10,000	50.00 per year
10,000 and above	55.00 per year

"14. Surface Water Supplies. The fee for the required sanitary analysis of public water supplies of surface origin and ground water supplies which require purification shall be as follows:

"Population of Cities:

Under 1,500	\$ 75.00 per year
1,500 - 3,000	110.00 per year
3,000 - 6,000	145.00 per year
6,000 - 10,000	165.00 per year
10,000 and above	185.00 per year

"It is requested that we be advised as to our authority to file the above proposed amendment to our existing regulations governing the installation, extension, and operation of public water supplies."

Section 192.180, RSMo 1949, is as follows:

"The division of health shall make and enforce adequate rules and regulations for the maintenance of a

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safe quality of water dispensed to the public and for the collection of samples and analysis of water, either natural or treated, furnished by municipalities, corporations, companies, or individuals to the public and shall fix the fees for any service rendered under the rules and regulations to cover the cost of the service."

This section gives the Division of Health power to make rules and regulations for the maintenance of a safe quality of water dispensed to the public. Also, the power to fix fees for services rendered by the Division of Health to cover the reasonable cost of such services.

The Division of Health by authority of said Section 192.180 has power among other things to fix fees for services rendered under the rules and regulations to cover the cost of such service. These fees must, however, be reasonable and should not be greatly in excess, if any, of the cost of the service rendered.

The power to make rules and regulations includes the power to alter them and to determine any reasonable policy of interpretation and application of said rules. In State ex rel. Dail v. Public Service Commission et al., 203 S.W. (2d) 491, 1.c. 497, the court said:

"The rule-making power of the Commission is not questioned. The power to make rules includes the power to alter them, and to determine any reasonable policy of interpretation and application of said rules. By the terms of the new Administrative Review Act heretofore referred to a rule is defined as including every regulations, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by any agency."

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Under this statute the Division of Health has power to make regulations and fix prices of service, and having such power the courts hold it also has the power to alter them to meet new conditions so long as such new regulations and new prices are reasonable.

It is the duty of your department to fix reasonable prices for services rendered under the rules and regulations. We are in no position to determine as to whether or not the prices set out in your request are reasonable or unreasonable because all the facts pertaining thereto are wholly within the knowledge of your department.

By virtue of the above statute and decision, we are of the opinion you have authority to alter or amend regulations and fix higher prices, if necessary, for services rendered under the rules and regulations to cover the cost of such service, provided such additional fees are reasonable under all the facts and circumstances. The total fees collected under the proposed change should not be greatly in excess, if any, of the reasonable cost of service to be rendered.

CONCLUSION

The Division of Health has power to fix the fees for services rendered for the maintenance of a safe quality of water dispensed to the public and may increase such fees, if necessary, so as to cover the cost of service contemplated under the provisions of Section 192.180, RSMo 1949.

Respectfully submitted,

GROVER C. HUSTON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

GCH/fwh