

DIVISION OF HEALTH:

It is the duty of the Director of the Division of Health to enforce Section 315.080, RSMo 1949, throughout the State of Missouri, in all cities, including those under special constitutional charter, except as to hotels of fire-proof construction of more than three stories in height situated in cities now having fire and building ordinance regulations and which are erected and maintained in compliance with such fire and building ordinances.



January 31, 1953

1-31-53

Honorable James R. Amos
Director
Division of Health
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion. You thus state your request:

"We would like to call your attention to the fact that the Bureau of Food and Drugs, Division of Health, who has been enforcing the State Hotel Laws, has obtained a certification from the various cities, that they are inspecting such hotels under their city building code or city fire ordinances and when the Bureau of Food and Drugs has received such a written certification, has in accordance with the Statutes accepted this as complying with Section 315.080 Revised Statutes of Missouri 1949."

"In discussing the certification of hotels under this Section with the personnel of Kansas City, Missouri, we were advised that the City Attorney has examined the laws in regard to this matter and the attached opinion has been submitted to us."

"We would like to request that you examine this opinion and advise us whether you concur with the attached interpretation. If, after examining said opinion, you differ in regard to this matter, would you please give us an official opinion concerning our legal responsibilities under Section 315.080."

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The opinion of the City Attorney of Kansas City, to which reference is made above, is also received.

At this point we take note of the fact that the City of Kansas City is operating under a special constitutional charter.

You inquire particularly regarding the responsibilities of the Director of the Division of Public Health regarding enforcement of Section 315.080, RSMo 1949. The above section applies to hotels more than three stories high, provides that such hotels shall be built in a particular manner in some respects, and sets forth in detail the manner of construction of fire escapes in such hotels. The section concludes with the statement:

"* * * provided, however, that none of the provisions of this section shall apply to and be binding on hotels of fireproof construction situated in cities now having fire and building ordinance regulations, and which are erected and maintained in compliance with such fire and building ordinances."

This latter clause clearly excepts from the provisions of Section 315.080, supra, hotels of fireproof construction located in cities which have fire and building ordinance regulations. The City of Kansas City, which has such regulations, would therefore be an exception from the provisions of Section 315.080, supra. Thus far the situation seems to be clear.

We now turn to Section 315.030, RSMo 1949. That section reads:

"1. The director of the division of health shall enforce the provisions of sections 315.010 to 315.230 and all inspection statutes and valid municipal ordinances or regulations properly construed as applying to hotels.

"2. The director shall keep a complete set of books for public use and inspection, showing the condition of each hotel inspected, together with the name of the owner, proprietor and manager thereof, and showing its sanitary condition, the condition of its fire escapes, and any

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other information for the betterment of the public service."

Since Section 315.080 is embraced in the sections enumerated above (315.010 to 315.230) it is clear that it is the duty of the Director of the Division of Health to enforce Section 315.080, supra, in all places in the state and as to all hotels in the state except as to "hotels of fireproof construction situated in cities now having fire and building ordinance regulations, and which are erected and maintained in compliance with such fire and building ordinance."

Thus far the situation is also clear, since no one would question the right of the state to make certain exceptions to the provisions of a general law.

We now turn to Sections 320.020 and 320.030, RSMo 1949. Section 320.020, RSMo 1949, reads as follows:

"When fire escapes are to be attached to buildings within a city, they shall be constructed under the supervision of and subject to the approval of the commissioner or superintendent of public buildings within such city, and if there be no such office within such city, they shall be subject to the approval of the chief of the fire department of such city. Whenever a fire escape attached to any building located within a city shall, upon inspection by the commissioner or superintendent of public buildings, or chief of the fire department of such city, be found in an unsafe and dangerous condition, the owner, lessee, proprietor or keeper of said building shall forthwith rebuild or repair same or replace same in safe condition, upon written notice of such commissioner or superintendent. When fire escapes are to be attached to buildings not within the limits of any city, they shall be subject to the approval of the sheriff of the county in which such building is located. And should such fire escape, through age or otherwise, be or become unsafe or dangerous, the same shall be repaired and placed in safe condition, upon written notice by said sheriff to the person in charge of such building.

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All fire escapes shall have proper and safe balconies for each story thereof, surrounded on the sides with wire bank and pipe rail not less than three feet in height, with openings from the building to said balconies. Whenever a stair fire escape is to be constructed, the stairway shall, where practicable, be of an angle of not more than fifty-five degrees and constructed so as to be placed on a blank wall. The stair fire escape shall be provided with one or more landings in each story, and enclosed on the sides with wire bank and pipe rail not less than three feet in height and running on the same angle as the stairs."

Section 320.030, RSMo 1949, reads as follows:

"The number of fire escapes to be attached to any one building, as required in this chapter, shall, when the building is located within a city, be determined by the commissioner or superintendent of public buildings within such city, and if there be no such officer in such city, then by the chief of the fire department of such city; provided, however, that all buildings of non-fireproof construction three or more stories in height, used for manufacturing purposes, hotels, dormitories, schools, seminaries, hospitals or asylums, shall have not less than one fire escape for every fifty persons or fraction thereof, for whom working, sleeping or living accommodations are provided above the second story, and all public halls which provide seating room above the first or ground story, shall have such number of fire escapes as shall not be less than one fire escape for every one hundred persons, calculated on the seating capacity of the hall, unless a different number is authorized in writing by the commissioner, or superintendent of buildings, or the chief of the fire department, or the sheriff of the county, as the case may be."

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It is plain that the above two sections do, in some particulars, fix the powers and duties of some municipal offices, to-wit, the commissioner or superintendent of public buildings or if there be no such offices, then the chief of the fire department, in respect to the construction of buildings within the municipality.

Section 22 of Article VI, of the 1945 Missouri State Constitution, reads as follows:

"No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous Constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents."

It would appear that Sections 320.020 and 320.030, supra, do what Section 22 of Article VI of the Missouri State Constitution, supra, says cannot be done, insofar as special constitutional charter cities are concerned. Of course, when the statute is in conflict with the Constitution the statute must give way and becomes null and void.

CONCLUSION.

It is the conclusion of this department that it is the duty of the Director of the Division of Health to enforce Section 315.080, RSMo 1949, throughout the State of Missouri, in all cities, including those under special constitutional charter, except as to hotels of fireproof construction of more than three stories in height situated in cities now having fire and building ordinance regulations and which are erected and maintained in compliance with such fire and building ordinances.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General