

AGRICULTURE:)
STATE VETERINARY SURGEON:) Deputy state veterinary surgeon not
PUBLIC OFFICERS:) required to be resident of Missouri.

June 26, 1953



Honorable L. A. Rosner, DVM
State Veterinarian
Department of Agriculture
Jefferson City, Missouri

Dear Mr. Rosner:

We render herewith our opinion based upon your request of June 15, 1953, which request reads as follows:

"I am writing in connection with a situation which has confronted this office the past years and which still prevails, and that is the question regarding eligibility for deputyship of nonresident veterinarians residing along the borderlines of Missouri, licensed to practice veterinary medicine in Missouri and whose practice does extend into the State of Missouri.

"This presents a rather awkward situation in which veterinarians in question are frequently called upon to do either Tuberculosis or Brucellosis testing, sales barn inspection work, issuance of official health certificates on movement of animals originating in Missouri and consigned to other states, and under Missouri statutes are ineligible to do so unless deputized by the Commissioner of Agriculture. In many instances this office could use the services of these veterinarians on special assignments from this office were these men commissioned as Deputy State Veterinarians.

"I would greatly appreciate a ruling from your office as to the eligibility

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of the non-resident veterinarians in question for a commission as Deputy State Veterinarians for the participation in any and all official work within their respective practice areas within the borders of the State of Missouri."

The ultimate question involved in your request is whether deputy state veterinarians are required to be residents of the State of Missouri. The statute authorizing their appointment and prescribing their powers and qualifications, Section 267.050, RSMo 1949, does not by its terms require residence. That section reads:

"Appointment of deputy veterinary surgeon--qualifications.--Whenever the state veterinary surgeon shall find it impossible to perform alone in an effective manner the duties imposed by this chapter, the commissioner of agriculture, with the advice of the veterinarian, may appoint, as may be needed, one or more deputy state veterinary surgeons, who shall be competent veterinarians, graduated from some reputable veterinary school or college. Such deputy veterinary surgeon shall, have, when on duty, the same power and same protection as now provided in this chapter for the said state veterinary surgeon, and shall work under his direction and instructions. The state commissioner of agriculture may also employ nonprofessional men and special experts as agents or inspectors whenever such a means shall become absolutely necessary to carry out this chapter properly or enforce the regulations of quarantine as possible in cases of emergency provided against by sections 267.240 and 267.250."

We should consider the effect of Section 8 of Article VII of the Missouri Constitution of 1945, reading as follows:

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"Qualifications for public office--nonresidents.--No person shall be elected or appointed to any civil or military office in this state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment, except that the residence in this state shall not be necessary in cases of appointment to administrative positions requiring technical or specialized skill or knowledge."

There can be no doubt but the employment of deputy state veterinary surgeon is administrative in nature.

"Executive and 'administrative' duties are such as concern the execution of existing laws." Brazell v. Zeigler, 110 Pac. 1052, at 1055, 26 Okla. 826.

Certainly this describes the duties of deputy state veterinary surgeons, which are concerned only with the administration of existing laws and are in no sense legislative or judicial. The position requires technical or specialized skill or knowledge, bringing it squarely within the exception of the above-quoted constitutional provision.

We do not believe it necessary to consider whether a deputy state veterinary surgeon holds "an office in this state" within the meaning of the above-quoted constitutional provision. We conclude that if a deputy state veterinary surgeon holds an "administrative position requiring technical or specialized skill or knowledge," he is not required to be a resident, even though he might be a public officer. Had the Constitutional Convention intended by the use of the last clause in the above-quoted section to free only public employees from the residence requirement, the clause need not have been included at all. But the clause, introduced by the phrase "except that," is evidently intended to limit the scope of what has been said before, so those in administrative positions requiring specialized skill or knowledge, whether "offices" or not, need not be residents of the state under the above Constitutional provision.

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The words "except that" in this provision we believe to be synonymous with "but" as used in In Re Naftzger's Estate, 180 P. 2d 873, 875, 24 Cal. 2d 595:

"The word 'but' indicates that what follows is an exception to that which has gone before, that, therefore, what is said before does not control that which follows it; it is an appropriate term to indicate the intention of those who use it to limit or restrain the sense or effect of something which had before been said, or to indicate a proviso, condition, or qualification and the word has been held synonymous with or equivalent to 'except' and 'provided'."

CONCLUSION

It is the opinion of this office that deputy state veterinary surgeons are not required to be residents of this state.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON
Attorney General

WDK/fh