



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



July 26, 1991

FILE NO. 91-029

PUBLIC HEALTH:
Membership of Multiple-County
Board of Health

Honorable Mark R. Stanley
State's Attorney, White County
White County Courthouse
Carmi, Illinois 62821

Dear Mr. Stanley:

I have your letter wherein you inquire regarding the implementation of section 5-25012 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-25012). Specifically, noting that section 5-25012 appears to require that the county's representatives on a multiple-county board of health include a physician, you ask how that section may be complied with if there is no physician resident in the county or if there is no physician in the county who is willing to serve on the board. For the reasons hereinafter stated, it is my opinion that if no

licensed physician from the county is available or willing to serve on the board, another citizen of the county who possesses particular fitness for service on the board may be appointed to fill the position.

Section 5-25012 of the Counties Code prescribes the composition of county and multiple-county boards of health. After providing that a multiple-county board of health shall consist of 4 members appointed from each county, that section further provides:

" * * *

* * * At least one member from each county on each multiple-county board of health shall be a physician licensed in Illinois to practice medicine in all of its branches, one member from each county on each multiple-county board of health shall be chosen from the county board or the board of county commissioners, as the case may be, and at least one member of the board of health shall be a dentist licensed in Illinois. Whenever possible, at least one member shall have experience in the field of mental health. All members shall be chosen for their special fitness for membership on the board.

* * * "

You have suggested that a county which is a member of a multiple-county health department may have no physician residing therein, or, alternatively, may have no physician residing therein who is willing or able to serve on the board of health. In that case, compliance with the literal terms of section 5-25012 may be impossible.

While the use of the word "shall" in a statute ordinarily suggests a mandatory construction, it may properly be construed as directory if that construction effectuates the intent of the General Assembly. (Marshall v. Ellison (1985), 132 Ill. App. 3d 732, 738.) Proper interpretation of a statute cannot be based solely upon its language, but must also consider the nature, object and consequences of construing it one way as opposed to another. (Grove School v. Dept. of Public Health (1987), 160 Ill. App. 3d 937, 941.) A provision in a statute is mandatory if the failure to comply therewith renders the proceeding to which it relates illegal or void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding. When the provision merely directs a manner of conduct for the guidance of public officials, it is generally directory, absent negative language denying the performance if the acts required are not done in the manner designated. A statute will be construed as mandatory, on the other hand, if the conduct specified is necessary to safeguard someone's rights. Shipley v. Stephenson County Elec. Board (1985), 130 Ill. App. 3d 900, 902-03.

The apparent intent of section 5-25012 of the Counties Code, in this regard, is to provide a multiple-county board of health which includes persons who are knowledgeable in various aspects of health care. Section 5-25012 does not, however, specify any penalties for failure to make appointments in

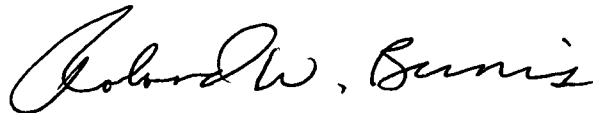
accordance with its terms. Further, it does not appear that any person's rights would be violated by the appointment of a board member who is not a member of one of the specified professions, particularly if no one meeting those qualifications is available to serve. To the contrary, it is more likely that adverse consequences would result from the failure to fill a vacant position on the board of health than from the appointment of a person who is not a licensed professional, as provided by the statute.

In my opinion, the provisions of section 5-25012 of the Counties Code quoted above are directory, rather than mandatory. While the membership of licensed physicians on the board of health would assist the board in carrying out its duties, if no physician is available to serve the continued existence and functioning of the board may require the appointment of persons otherwise chosen for their special fitness to serve. This was the rationale of the court in Kohler v. Barnes (1973), 123 N.J. Super. 69, 301 A.2d 474, which held that there was no abuse of discretion by a mayor who appointed a person not a member of one of several statutorily-designated professions for service on a township industrial commission. In reaching its conclusion, the court noted both the general fitness of the appointee and the fact that there was no showing that any representative of the specified categories of persons was available for service.

Therefore, it is my opinion that when no licensed physician is available or willing to serve on a multiple-county board of health from a particular county, another citizen of the county may be appointed to fill that position.

You have also noted that section 5-25012 of the Counties Code provides that at least one member of a multiple-county board of health shall be a dentist licensed in Illinois. You have suggested that similar problems may be encountered in locating a dentist willing to serve on the board. For the reasons previously stated, it is my opinion that if there is no licensed dentist residing within the jurisdiction of the multiple-county board of health, or if no dentist is willing to serve on the board, the board may be properly constituted without the membership of a dentist.

Respectfully yours,

A handwritten signature in cursive script that reads "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name.

ROLAND W. BURRIS
ATTORNEY GENERAL