

State Board of Education—State Orphans' Home—Physicians.

The power of appointing a physician for the State Orphans' Home rests with the state board of education unless by it conferred upon the executive board.

State Board of Education,
Helena, Montana.

December 18, 1925.

Gentlemen :

You have requested my interpretation of section 1488, R. C. M. 1921, and particularly regarding the question as to who has authority to appoint a physician at the state orphans' home.

Section 1488, R. C. M. 1921, provides as follows :

"The superintendent of the home shall be a person of acknowledged ability and fitness for his office, and shall sustain a good moral character. He shall have entire control of the educational, moral, and dietetic treatment of the inmates and pupils, and shall see that the several employees in the institution faithfully and diligently discharge their respective duties. He shall employ such attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical management of the institution, and assign them their respective places and duties. The superintendent and matron shall devote their entire time to the interests of the home."

This section was originally section 2480 of the codes of 1895. At the time of its passage section 2484 was also enacted, which came into the revised codes of 1907 as section 1263. This section (1263) provided :

"The superintendent, under the direction of the board of trustees, shall procure the necessary clothing and provisions, medicines and medical attendance for the inmates of the home, and make all necessary provisions for the same, so as to fully carry into effect the object and purposes of this act and the proper maintenance of said home."

It is thus apparent that when section 1488, R. C. M. 1921, was first enacted the legislature did not contemplate that it gave authority to employ medical attendance, and hence section 2484 of the codes of 1895 made provision for the employment of medical attendance.

Section 1263 of the revised codes of 1907 was repealed by chapter 73, laws of 1909, leaving no express provision for the employment of medical attendance.

Chapter 73, laws of 1909, in addition to repealing section 1263 of the revised codes of 1907, provided that the state board of education shall have the general control and supervision of the state orphans' home. This has been the law ever since, as evidenced by chapter 76, laws of 1913, section 841, R. C. M. 1921 and chapter 160, laws of 1925.

Section 842, R. C. M. 1921, provides in part that the executive board "shall have such immediate direction and control, other than financial, of the affairs of such institution (including the state orphans' home) as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board."

This power is also reiterated in section 847, R. C. M. 1921.

As before stated, when section 1488 was enacted it appears that the legislature did not contemplate that authority was conferred by it to employ medical attendance, but made special provision for medical attendance by section 2484 of the codes of 1895.

When section 2484 of the codes of 1895 (section 1263 of the revised codes of 1907) was repealed, it was evidently the intention of the legislature, as evidenced by section 842, R. C. M. 1921, to place this matter under the control and supervision of the state board of education.

Hence, it is my opinion that unless the state board of education has conferred the power of providing medical attendance for inmates of the orphans' home upon the executive board under section 842, R. C. M. 1921, the power to provide medical attendance rests with the state board of education. If this power has been conferred upon the executive board it is still subject to supervision and control of the state board of education as in said section 842 provided.

Very truly yours,

L. A. FOOT,
Attorney General.