

No. 149

PHYSICIANS—SURGEONS—CERTIFICATES TO PRACTICE MEDICINE—GLACIER NATIONAL PARK, practicing therein without license—CONTRACTS

- Held: 1. The State of Montana has no jurisdiction over criminal offenses committed within the boundaries of Glacier National Park.
2. A physician practicing his profession within the boundaries of the Glacier National Park without a certificate from the State Board of Medical Examiners is not violating the Medical Practice Act.
3. Whether a physician regularly licensed to practice in this state violates the Medical Practice Act by contracting with a physician not so licensed would depend upon the provisions of the particular contract and the objects sought to be accomplished.

June 23, 1941.

State Board of Medical Examiners
Otto G. Klein, M. D., Secretary
First National Bank Building
Helena, Montana

Gentlemen:

You have requested my opinion on the following statement of facts:

“Certain duly licensed practitioners of medicine and surgery, in the State of Montana, assume, during the National Park season, to make contracts with physicians, not licensed under the laws of the State of Montana, under which such physicians proceed to practice medicine and surgery within the boundaries of Glacier National Park, all of which lies within the State of Montana. These so-called contract-physicians, practicing in Glacier National Park, in some in-

stances assume to state that they are practicing under the authority of the Montana physician with whom they contract, and in other instances simply proceed to function under the contract, but without reference to it.

"The Board desires to know whether or not the Montana physicians, so contracting, violate the Medical Practice Act of the State of Montana, and further, whether the physicians practicing in Glacier National Park are violating the Montana Medical Practice Act, and further, whether the contract is illegal."

Before any person may legally practice medicine or surgery within this state, he must obtain a certificate to do so, as provided in Section 3118, Revised Codes of Montana, 1935. This section contains the only provisions of law by which one may be authorized to practice medicine or surgery in this state.

I find no provision authorizing a person to practice within the state under a contract with a duly authorized practicing physician or surgeon. Such a contract would be unlawful and void. (Section 7501, Revised Codes of Montana, 1935.)

Section 3118, *supra*, provides before one may legally practice "within this state" he must have a certificate. Then the question would arise as to whether one practicing within the boundaries of the Glacier National Park is practicing "within this state."

Section 22, Revised Codes of Montana, 1935, was enacted as Chapter 33, Laws of 1911, and was the act creating the Glacier National Park. The act reads as follows:

"Sec. 22. **Glacier National Park.** Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of congress, approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier National Park," saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside of said park; and saving, further, to the said state the right to tax persons and corporations, their franchises, and property, on the lands included in said park; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of this state that they assume police or military jurisdiction over said park."

It will be noted by this act the state ceded exclusive jurisdiction over the territory embraced within the boundaries of Glacier Park to the Federal Government. However, the state reserved certain jurisdiction within the park, among which was the right to serve civil or criminal process in any suits or prosecutions for or on account of "rights acquired, obligations incurred, or crimes committed in said state, but outside of said park . . ." (Emphasis mine.)

Section 3122, Revised Codes of Montana, 1935, provides "Any person practicing medicine or surgery **within this state** without first having obtained a certificate to practice as provided by law . . ." shall be guilty of a misdemeanor.

It will be seen the statute prohibits the practice within the state without a license. Can it be said one practicing within the boundaries of Glacier Park is practicing within the State of Montana? This would raise the question whether the state—by Section 22, Revised Codes of Montana, *supra*—has relinquished its right to punish for crimes against its laws committed within the park boundaries.

Section 22, in ceding exclusive jurisdiction, contains the proviso, "provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of this state that they

assume police or military jurisdiction over said park." This section was enacted by the Legislative Assembly and approved by the Governor on February 7, 1911. (Chapter 33, Laws of 1911.)

On August 22, 1914, Congress enacted the following acts:

"Sole and exclusive jurisdiction is assumed by the United States over the territory embraced within the Glacier National Park, saving, however, to the State of Montana the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said State but outside of said park, and saving, further, to the said State the right to tax persons and corporations, their franchises and property, on the lands included in said park. All the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the state of Montana." (38 Stat. 699, C. 264, Sec. 1.)

"Glacier National Park shall constitute a part of the United States judicial district of Montana, and the district court of the United States in and for said district shall have jurisdiction of all offenses committed within said boundaries." (38 Stat. 699, C. 264, Sec. 2.)

"If any offense shall be committed in the Glacier National Park, which offense is not prohibited or the punishment is not specifically provided for by any law of the United States, the offender shall be subject to the same punishment as the laws of the State of Montana in force at the time of the commission of the offense may provide for a like offense in said State; and no subsequent repeal of any such law of the State of Montana shall affect any prosecution for said offense committed within said park." (38 Stat. 699, C. 264, Sec. 3.)

On August 27, 1914, the Secretary of the Interior notified the Governor of the State of Montana as follows:

"DEPARTMENT OF THE INTERIOR
WASHINGTON
August 27, 1914

"Hon. S. V. Stewart,
Governor of Montana,
Helena, Montana.

"My dear Governor:

"I have to advise you that an act entitled 'An Act to accept the cession by the State of Montana of exclusive jurisdiction over the lands embraced within the Glacier National Park, and for other purposes,' was approved by the President on August 22, 1914, and a certified copy thereof is herewith transmitted for your information.

"This notice is given you pursuant to the requirements of Section 12 of the act which provides that the secretary of the Interior shall notify in writing the Governor of the State of Montana of the passage and approval of this act.

"There are also enclosed 20 extra copies of the act for distribution among such of the State officers as should be made aware of the acceptance by the United States of exclusive jurisdiction over the lands embraced within the Glacier National Park.

Cordially yours,

/s/ FRANKLIN K. LANE"

Thus it will be seen all the provisions of Section 22, supra, have been complied with in order to cede exclusive jurisdiction, excepting only the reservations as provided in the Act.

See *Collins v. Yosemite Park & C. Co.*, 304 U. S. 518, 539.

As to your questions relative to the contract, I have pointed out above a contract to do an unlawful act is null and void. Insofar as a contract purports to authorize one party to practice medicine within the State without first having obtained a certificate from your board, it would be illegal and void, and the physician so practicing would be violating the Medical Practice Act. Such a contract, purporting to authorize an unlicensed physician to practice within the boundaries of Glacier National Park, would not be illegal or void in itself, because, as pointed out in this opinion, practicing medicine without a license within the Park is not a violation of state laws.

Whether or not a physician regularly licensed to practice medicine in the State of Montana would be violating the Medical Practice Act by entering into a contract with one not so licensed would depend upon the provisions of the contract and the objects sought to be accomplished. The question would necessarily have to be determined from the provisions of the contract itself.

It is therefore my opinion:

1. The State of Montana has no jurisdiction over criminal offenses committed within the boundaries of Glacier National Park.
2. A physician practicing his profession within the boundaries of the Glacier National Park without a certificate from your board is not violating the Medical Practice Act.
3. Whether a physician regularly licensed to practice in this state violates the Medical Practice Act by contracting with a physician not so licensed would depend upon the provisions of the particular contract and the objects sought to be accomplished.

Sincerely yours,

JOHN W. BONNER
Attorney General