

## No. 258

**STATE BOARD OF MEDICAL EXAMINERS—POWERS  
AND DUTIES—MEDICAL EXAMINERS**

**Held:** The State Board of Medical Examiners has no authority to expend funds of the board for investigations of violations of the act, or employ experts, investigators, legal counsel, etc. Any member or members of the board may make investigations of violations upon authorization of the board, and while so engaged may receive per diem and mileage as provided in the Act.

October 7, 1941.

Montana State Board of  
Medical Examiners  
Helena, Montana

Attention: Mr. Otto G. Klein, Secretary

Gentlemen:

You have advised me that, at a meeting of your Board on April 1, 1941, the following Resolution was adopted:

“RESOLVED: That the Secretary of the State Board of Medical Examiners be and he is hereby instructed to employ such assistance as he deems necessary for the purpose of making close and careful investigations into alleged violations of the Medical Practice Act in Montana, including employment of the necessary legal assistance and advice to insure the proper preparation and presentation of cases involving such matters; and for the purpose of securing the better enforcement of the Medical Practice Act, the Secretary-Treasurer shall be and he is authorized and empowered to expend not to exceed the sum of Two Thousand Dollars (\$2000.00) annually for such purposes.”

You now request my opinion on the following:

- “(1) Whether the above resolution is lawful, in the sense that the Board has the power to adopt it.
- “(2) What the Board may do under the law, and under the Resolution, by way of law enforcement in Montana.
- “(3) What expenditures, in connection with law enforcement, would be lawful for the Board to make. Will expenditures for attorneys services, detective services, investigatory services, expert testimony, court costs, etc., be properly included?”

In an opinion issued to your Board recently, this office held the State Board of Medical Examiners is a creature of statute and its members are public officers and, as such, have only such powers as given by statute or as may be implied therefrom. (See Opinion No. 147, Vol. 19, Official Opinions of Attorney General.)

Section 3116, Revised Codes of Montana, 1935 creates the board and defines the qualification, number and term of office of its members. This section specifically provides the members so appointed “shall constitute the board of examiners for the purpose of this article.”

Section 3117 provides for the organization of the board by the election of a president, secretary and treasurer from among its members, provides for a quorum and empowers the president and secretary to administer oaths in the examination of applicants for certificates and witnesses called before the board in the transaction of business under the provisions of the act.

Section 3119 authorizes the board to refuse to grant a certificate or revoke a certificate for unprofessional, dishonorable, or immoral conduct. This section provides for a hearing in either case, the taking of testimony

and rendering of a decision by the board. It further provides for an appeal by the applicant to the District Court. The appeal shall be heard before a jury of six physicians who shall be entitled to mileage and per diem. This statute designates the Attorney General as the attorney for the board.

Section 3123 provides for the fees to be paid by the applicants for examination and by those admitted without examination, and provides such fees shall be paid to the Secretary and by him turned over to the State Treasurer to be deposited by him in the medical board fund as provided by law.

We find no provision in the law authorizing the board to employ any persons. In fact, Section 3117 specifically provides the officers, including the secretary, shall be members of the board. There is no provision for the payment of salaries of any officers. Section 3124 provides each member shall receive \$10.00 per day and mileage while in the active and necessary business of the board. We think the legislature contemplated any investigation necessary to determine violation should be made by a member or members of the board who shall receive the per diem and mileage provided in Section 3124 while so engaged. The act (Section 3119) specifically designates the Attorney General as the attorney for the board. It does not provide for the employment of other or additional counsel.

Section 3124 provides each member of the board shall be paid ten dollars per day and mileage while in the active and necessary discharge of his duties. This section establishes a medical board fund, and provides money of such fund shall be paid out by warrant drawn by the Secretary and countersigned by the President. This statute then provides "the rate of mileage and attendance before said board shall be the same as is now allowed in justice of the peace courts."

The statute above noted provides all the powers, duties and authority of the board. To these statutes, therefore, we must look for any authority or power which the board may exercise, either specifically granted or necessarily implied.

The resolution in question is, therefore, not within the board's powers to adopt and give effect to, insofar as it authorizes the Secretary to employ assistants, investigators, counsel, etc. The board may, however, authorize the Secretary or any member or members of the board to make such investigations who may be paid the per diem and mileage provided in Section 3124.

It is therefore my opinion the resolution is without the authority of the board. Any investigations deemed necessary for the enforcement of the provisions of the act may be made by the secretary or any member of the board, and while so engaged such person may receive the per diem and mileage provided. Expenditures of the funds of the board for attorneys' services, detective services, investigatory services, expert testimony, court costs, etc., may not legally be made.

It may not be amiss here to state any evidence of violations of the act may be placed before any County Attorney, whose duty it is to prosecute. The Attorney General is designated in the act as the legal counsel for the board and his services are available.

Very truly yours,

JOHN W. BONNER  
Attorney General