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Legal Opinion Relative to Revised Statutes of 1944, Chapter 30, Sections 92 and 109, Rendered by George G. West, Assistant Attorney General October 21, 1947

This opinion is furnished in response to two questions asked by the Commissioner of Health and Welfare in his memorandum dated July 31, 1947, which questions are as follows:

1. May the state contribute a less share to the towns than the 50%, which is presently being contributed?

2. May the service of a public health nurse once started in a town or towns be discontinued?

(1) Sec. 92 provides that two or more adjoining towns may unite in employing the same public health nurse. The program shall be carried on according to accepted standards for such service.

The first paragraph of section 109 provides that towns desiring to take advantage of a public health nurse service are empowered to appropriate money for salary and travel at the annual town meeting. Up to this point in the statutes the impression is created that these towns are to furnish the service of a public health nurse at their own expense. However, the second paragraph of section 109 provides for contributions on the part of the state. It is, therefore, the wording of this second paragraph of 109 which determines the answer to this question.

The second paragraph of 109 says:

> "The state may contribute not exceeding 50% per year on account of the salary and travel of any such public health nurse....; and the entire salary and necessary travel of such nurses shall be paid by the state bureau of health when an amount equal to 1/2 such salary and travel has been paid to the treasurer of state, to be credited to the public health nursing account of said bureau...."

The word "may" which is underlined above would indicate that the contribution by the state is permissive rather than mandatory. However, the word "shall" which is underlined above is mandatory and requires the state bureau of

health to pay the entire salary and travel of the nurses when the towns have paid to the treasurer of the state an amount equal to 1/2 such salary and travel.

I, therefore, conclude that under these two sections, the state must contribute 50% per year on account of the salary and travel of such public health nurse.

(2) It is my opinion that the service of a public health nurse having once been started in a particular town or group of towns may be discontinued if the town, at its annual town meeting, refuses to make an appropriation for such service. There is nothing in Sections 92 and 109 that gives the state the right to discontinue this service except if the services being rendered are not in accordance with accepted standards.

GEW:Dam