

APRIL 18, 1949.

DANIEL BERGSMAN, M.D., M.P.H.,
State Commissioner of Health,
State House, Trenton, N. J.

FORMAL OPINION—1949. No. 34.

DEAR SIR:

This is in response to your letter dated March 30, 1949, concerning your authority to fix the compensation of a director of a bureau in your department who, of necessity, must be a licensed physician.

By Chapter 177, P. L. 1947, the Legislature established the State Department of Health. This statute was amended in 1948 by Chapter 444, P. L. 1948. Section 13, Chapter 177, P. L. 1947 confers certain powers and duties upon the Commissioner with respect to the organization of the department and the appointment of personnel. The question now arises whether you, as Commissioner of Health, may, subject to approval by the Public Health Council, fix the compensation of a physician director of a bureau in your department.

In my opinion, Section 13, Chapter 177, P. L. 1947 (R. S. 26:1A-130), appears to confer this authority provided such compensation is within the limits of available appropriations.

Section 13, Chapter 177, P. L. 1947 (R. S. 26:1A-13) provides as follows:

"The commissioner shall, subject to approval by the Public Health Council, prescribe the organization of the department. He shall, subject to the provisions of Title 11 of the Revised Statutes relating to Civil Service, appoint the directors of the bureaus and such other personnel as he may consider necessary for the efficient performance of the work of the department.

"He shall prescribe the duties of all such persons thus appointed and shall, subject to approval by the Public Health Council, fix their compensation within the limits of available appropriations. All such persons thus appointed shall be in the classified service of the Civil Service of the State, unless otherwise provided by law."

The Civil Service Law, R. S. 11:4-4 (q) provides:

"The positions held by the following officers and employees shall not be within the classified service:

(q) All superintendents, directors, or other employees in the State government, who, of necessity, must be licensed physicians, surgeons, or dentists;"

Section 13, Chapter 177, P. L. 1947, above quoted authorizes you to appoint, subject to approval by the Council, the directors of the bureaus and fix their compensation, and prescribes that they shall be in the classified service unless otherwise provided by law. The Civil Service Act (R. S. 11:4-4 (q)), above set forth, otherwise so provides by expressly exempting from the classified service directors who, of neces-

sity, must be physicians. In view of these provisions, therefore, you, as Commissioner, subject to approval by the Public Health Council, have the authority to fix the compensation of such physician director of a bureau but it must be within the limits of available appropriations.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOSEPH A. MURPHY,
Assistant Deputy Attorney General.

JAM:MB

APRIL 20, 1949.

SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton 7, New Jersey.

FORMAL OPINION—1949. No. 35.

MY DEAR COMMISSIONER BATES:

This acknowledges your inquiry of April 13th, requesting my advices as to the present validity and legal force and effect of an Opinion rendered by this office on November 27, 1922, in a matter pertaining to the discipline of guards and uniformed officers at the New Jersey State Prison and allied institutions.

It appears that the Attorney General at that time answered two questions in the affirmative and you desire to restate these questions at this time as follows:

1. Has the State Board of Control power to compel the suspension of an employee of the Prison when charges have been preferred against such employee and when the Principal Keeper refuses to take such action?

2. Has the Board of Managers of the State Prison power to compel the Principal Keeper to suspend a guard of the Prison or one of its allied institutions against which said employee charges have been filed either by the Board of Managers of the Prison or by the State Board of Control?

I am of the opinion, and I so advise you, that both questions are still answerable in the affirmative for the reasons so ably stated in the Opinion of the Honorable Thomas F. McCran, then Attorney General, which I shall briefly review, and for other reasons which I shall set forth.

Our former Supreme Court said: "The legislative policy (N. J. S. A. 30:4, et seq.) has been to give the State Board of Control of Institutions and Agencies a wide latitude in the matter of administration of the penal institutions * * *." (In re O'Connor, 130 N. J. L. 197.)

Specifically, in R. S. 30:1-12 the state board is empowered to "determine all matters of policy and shall have power to regulate the administration of the institutions * * * within its jurisdiction, correct and adjust the same so that each shall function as an integral part of a general system. The rules, regulations, orders and