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SPRINGFIELD

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FILE NO.: S-373

PUBLIC HEALTH:
Requirements for issuance
of permit under Hospital
Licensing Act.

Dr. Franklin D. Yoder, Director
Department of Public Health
State of Illinois
Springfield, Illinois 62706

Dear Dr. Yoder:

Your letter of November 23, 1971, states the Department of Public Health is responsible for the administration of the Hospital Licensing Act. (Ill. Rev. Stat. 1969, ch. 111 1/2, pars. 142-157 incl.) You then quote Sections 2 and 6 of the Hospital Licensing Act and Section 55 of the Civil Administrative Code. Your letter concludes:

"I respectfully request your opinion as to whether, in the evaluation of an application for a permit to establish a hospital, the Director of Public Health may consider the effect that the establishment of a new hospital would have upon the interests

of the health and lives of the people of the State, including the impact it would have upon the financial stability of existing hospitals in the area, the accessibility of hospital facilities and services to individuals throughout the area, and the distribution of physicians and paramedical personnel in the area as a part of his consideration of whether safeguards are provided which assure hospital operation and maintenance consistent with the public interest having particular regard to safe, adequate and efficient hospital facilities and services."

Section 55 of the Civil Administrative Code, which you quote, defines certain general powers of the Department of Public Health. That section (Ill. Rev. Stat. 1969, ch. 127, par. 55.02) gives the Department the power:

"55.02. To have the general supervision of the interests of the health and lives of the people of the State and to exercise the rights, powers and duties of those Acts which it is by law authorized to enforce." (Emphasis added.)

The specific department powers under the Hospital Licensing Act are found in Sections 2 and 6 (Ill. Rev. Stat. 1969, ch. 111 1/2, pars. 143 and 147) which you quote.

Section 2 states:

"The purpose of this Act is to provide for the better protection of the public health through the development, establishment, and enforcement of standards (1) for the care of individuals in hospitals, (2) for the construction, maintenance, and operation of hospitals which, in light of advancing knowledge, will promote safe and adequate treatment of such individuals in hospitals, and (3) that will have regard to the necessity of

determining that a person establishing a hospital have the qualifications, background, character and financial resources to adequately provide a proper standard of hospital service for the community."

Section 6 of that Act then provides in part:

"(a) Upon receipt of an application for a permit to establish a hospital the Director shall issue a permit if he finds (1) that the applicant is fit, willing, and able to provide a proper standard of hospital service for the community with particular regard to the qualification, background, and character of the applicant, (2) that the financial resources available to the applicant demonstrate an ability to construct, maintain, and operate a hospital in accordance with the standards, rules, and regulations adopted pursuant to this Act, and (3) that safeguards are provided which assure hospital operation and maintenance consistent with the public interest having particular regard to safe, adequate, and efficient hospital facilities and services. . . ."
(Emphasis added.)

The three sections set out above do not require an inquiry into the possible financial impact on existing hospitals. Section 2 states the purpose of the act is to provide "better protection of the public health." The section then requires a finding that the new construction "will promote safe and adequate treatment." This would relate only to individuals. It then requires a third finding-- that the applicant has the character, background and financial resources to provide a proper standard of hospital service for the community.

Section 6 provides "the director shall issue a permit" if he makes finding that the applicant is (1) fit, willing and able to provide a proper standard, (2) has the necessary financial resources and (3) "that safeguards are provided which assure hospital operation and maintenance consistent with the public interest."

Neither of the sections of the Hospital Licensing Act refer in any way to the effect of the licenses on existing hospitals in the area. Each is limited strictly to finding that the public health will be better protected and that the operation and maintenance are consistent with the public interest. These necessary findings relate only to the operation of the hospital and the treatment of individuals. Nor do the Hospital Licensing Act Rules and Regulations of the Department of Public Health, effective September 1, 1968, as amended, Part I, Rules 1-1.2-1-1.8, dealing with permits, deviate in any manner from the statutory language. Like the quoted statutory provisions, they can only be treated as geared to the protection of persons who are patients, and not to the ultimate welfare of existing hospital facilities or personnel.

Section 55 of the Civil Administrative Code gives the Department of Public Health "supervision of the interests of the health and lives of the people of the state." This section also appears limited in its application to individuals and not to the possible effect on other hospitals in the area. If the General Assembly had intended that the interests and financial well-being of other hospitals in the area were a necessary element to be considered in granting a license, it would have been very simple to add such a specific requirement. (Strat-O-Seal Mfg. Co. v. Scott, 72 Ill. App. 2d 480; Allen v. Conken, 39 Ill. 2d 427.) As you know, many statutes, specifically those involving public utilities, require a finding of convenience and necessity before a new license can be granted.

Specific findings are required as to the effect on the community of the issuance of licenses under the Community Currency Exchange Act (Ill. Rev. Stat. 1969, ch. 16 1/2, pars. 30 through 56.3) and the Illinois Banking Act. (Ill. Rev. Stat. 1969, ch. 16 1/2, pars. 101 through 182.) The Community Currency Exchange Act, Section 30, provides that community currency exchanges are "affected with a public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this state."

Sections 34.1 and 34.3 both provide that upon receipt of an application for a license for a community currency exchange or an ambulatory currency exchange, the Director "shall investigate the need of the community for the establishment of an exchange at the location specified." Section 34.3 further provides that if the issuance of a license to engage at the location specified "will not promote the convenience and advantage of the community in which such business is to be conducted, the application shall be denied."

The Illinois Banking Act has similar provisions. Section 10(5) provides that upon the filing of an application to organize a bank, the Commissioner, among other matters, shall consider whether "the convenience and needs of the area sought to be served" by the proposed bank will be promoted. Section 5, subparagraph 15(b) provides that no banking facility for doing business with passengers in motor vehicles "shall be closer than 600 feet to any then existing main banking premises of another bank without irrevocable consent of that bank."

Other similar statutes could be quoted. However, those mentioned above indicate that when the General Assembly wanted the needs or convenience of a particular area to be considered, specific provisions were included to that effect.

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The Hospital Licensing Act provides that the director "shall" issue a permit where certain necessary findings are made. These findings do not include an inquiry into the needs of the community as such or the effect on existing institutions, in my opinion.

Very truly yours,

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