



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 14, 1976

ATTORNEY GENERAL OPINION NO. 76- 286

Mr. Robert M. Corbett
Attorney
Department of Health and Environment
Building 740 - Forbes AFB
Topeka, Kansas

Re: Public Health--Premarital Examinations--Health Officers

Synopsis: When a joint city-county health department appoints a local health program administrator as health officer, pursuant to K.S.A. 1975 Supp. 65-201, who is not a physician, such administrator may not give the examination and execute the certificate required by K.S.A. 1975 Supp. 23-301.

* * *

Dear Mr. Corbett:

You inquire concerning Opinion No. 76-276, which was prepared in response to a request from Judge Meyer of the Lyon County Probate Court, concerning the responsibility of the health officer of a joint city-county board of health to provide premarital examinations required under K.S.A. 1975 Supp. 23-301 and issue the necessary certificates, upon request of an applicant for a marriage license.

K.S.A. 1975 Supp. 23-301 requires that before the probate judge shall issue a marriage license, each applicant must file a certificate stating that the applicant has been given an examination including a standard serological test for the discovery of syphilis, and to determine whether the applicant is infected with syphilis or shows symptoms of other venereal disease and, whether, if infection exists, whether it is communicable. The statute concludes with the following language:

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"Any county or city health officer shall, upon request of any applicant, perform the examination and make the certificate required hereunder, without charge."

Judge Meyer advised that a local physician acted as health officer, largely in an advisory capacity. On the basis of that information, we concluded that the health officer must provide the required examination.

You advise, however, that in Lyon County, a physician does not serve as health officer. K.S.A. 1975 Supp. 65-201 states in pertinent part thus:

"The appointing authority of city-county, county or multicounty health units with less than one hundred thousand (100,000) population may appoint a qualified local health program administrator as the local health officer if a physician or dentist is designated as consultant to direct the administrator on program and related medical and professional matters."

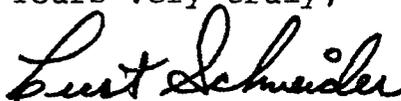
You advise that in Lyon County, the board of health has appointed a local health program administrator as the local health officer, in lieu of appointing a physician. Clearly, the quoted language of K.S.A. 1975 Supp. 23-301, contemplates that the health officer shall be a physician. When, as here, a local health program administrator has been appointed as health officer, such administrator cannot legally succeed to those duties of the health officer which by their very nature may be performed only by a physician licensed to practice medicine under the laws of the State of Kansas. We have reviewed your letter of August 20, 1976, to Mr. Carl Kunish, Director of the Emporia-Lyon County Health Department, and agree fully with you advice to him. The physician or dentist who is designated as a consultant is not, of course, the health officer, and has no duty to perform the examination and provide the certificate required of the health officer under K.S.A. 1975 Supp. 23-301.

As a result, applicants may be required to obtain the necessary examination and certificate from a private physician, although the

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health department, under the supervision of the consulting physician may obtain blood specimens for serological examination.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj