

placing agencies in licensed homes, and children whose parents or legal guardians are unable to provide a home for them and who are placed in licensed homes or in homes of relatives in the school district for the purpose of securing a suitable home for said children and not for an educational purpose, shall be considered residents for educational purposes of the school district where the homes in which they are living are located, and as such shall be admitted to the school in such district, except as provided in section 945 of this act." (emphasis added)

Thus, if the intermediate school district declines to establish a special school for children in children's homes operated by the juvenile court, then such children are to be considered educational residents of the local school district where the home in which they are living is located, and they are to attend that local school district's schools.

It is therefore my opinion that, based upon the provisions of The School Code of 1955, *supra*, the decision as to whether to establish a school for wards of the juvenile court ultimately rests with the intermediate school district board of education, not the county board of commissioners. In the event that the intermediate district board deems such a school unnecessary, then those children should be provided an education by the local school district in which the juvenile home where they are living is located.

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OSTEOPATHS: Privilege of treating patients in a county hospital.

HOSPITALS: Exclusion of osteopaths from practice in county hospitals.

The board of hospital trustees of a county hospital may not deny to osteopaths the privilege of treating patients in a county hospital.

Opinion No. 5049

July 8, 1976.

Honorable F. Robert Edwards
State Representative, 79th District
P. O. Box 119
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You have asked for my opinion as to whether Hurley Hospital in Flint, Michigan, may exclude doctors of osteopathy from treating patients in that hospital. You state in your letter that this hospital is a county hospital and is, therefore, governed by the provisions of 1913 PA 350, MCLA 331.151 *et seq.*; MSA 14.1131 *et seq.*

Under 1913 PA 350, *supra*, § 4, the legislature vested in the board of trustees of Hurley Hospital the control, management of the hospital and the power to grant hospital privileges to doctors to practice medicine in that institution. This board is a body corporate. Its rule-making powers are set forth in 1913 PA 350, § 4, *supra*, which reads in pertinent part:

“ . . . The board of hospital trustees shall make and adopt such bylaws and rules for its own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof not inconsistent with this act, and the ordinances of the city or town wherein such public hospital is located. . . .” [Emphasis supplied.]

It is clear from a reading of 1913 PA 350, § 4, *supra*, that the rule-making power of the board of this institution is limited to the making of bylaws and rules for the guidance of the board and for the economic and equitable conduct of the hospital. Thus, a board of trustees operating under the aforementioned statute is given no authority to promulgate bylaws, rules, regulations or policies which exclude doctors who are duly-licensed practitioners in this state from treating patients in that hospital so long as a licensed doctor observes the guidelines, rules and regulations of the hospital and practices within the confines of statutes and medical regulations affecting his practice. See *Albert v Gogebic County Hospital*, 341 Mich 344; 67 NW2d 244 (1954); OAG, 1949-1950, No. 1166, p 480 (February 24, 1950); OAG, 1949-1950, No. 1238, p 584 (June 9, 1950).

The foregoing interpretation of 1913 PA 350, § 4, *supra*, is supported by 1913 PA 350, *supra*, § 13 as last amended by 1958 PA 105, MCLA 331.163; MSA 14.1142, which provides:

“All physicians and surgeons licensed under the laws of Michigan shall have the privilege of treating patients in the hospital, subject always to such rules and regulations as shall be established by the board of trustees under the provisions of this act. The patient shall have the right to employ at his own expense his own physician or nurse, and when acting for any patient in such hospital the physician employed by the patient shall have charge of the care and treatment of such patient.”

OAG, 1949-1950, No. 1238, p 584, *supra*, held that an osteopath is a physician of medicine within the meaning of the following definition:

“A physician is one versed in or practicing the art of medicine, and the term is not limited to the disciples of any particular school. The term “medicine” is not limited in meaning to substances supposed to possess curative or remedial properties, but has also the meaning of the healing act,—the science of preserving health and treating disease for the purpose of cure,—whether such treatment involves the use of medical substances or not. In common acceptance, anyone whose occupation is the treatment of diseases for the purpose of curing them is a physician, * * *.” *Gage v Siman*, 278 Ill 256, 115 NE 817, 8 ALR 1070.”

Hence, an osteopathic doctor who is licensed to practice medicine in this state is within the ambit of 1913 PA 350, § 13, *supra*, and therefore is entitled to treat patients in a county hospital.

Similarly, the hospital licensing law, 1968 PA 17 as amended by 1975 PA 132, § 11, MCLA 331.421; MSA 14.1179(11) states in part:

“ . . . The governing body shall also certify annually to the department of public health as part of its application for licensure that selec-

tion and appointment of physicians to the medical staff shall be without discrimination solely on the basis of their license or registration or their professional education as doctors of medicine or doctors of osteopathy. . . ."

You mention in your letter the case of *Stribling v Jolley*, 241 MA 1123; 253 SW2d 519 (1952), in which the Court held that rules and regulations adopted by a county board of trustees which systematically exclude osteopathic doctors from the practice of medicine in a county hospital were discriminatory and void. This decision is compatible and consistent with 1913 PA 350, *supra*, in that it does not accord the board of trustees of a county hospital the opportunity to give preferential treatment to one class of physicians while discriminating against another class, mainly osteopaths.

Therefore, in response to your question, Hurley Hospital may not exclude doctors of osteopathy from treating patients in that hospital.

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WARRANTS: Written authorization by prosecuting attorney.

PROSECUTING ATTORNEY: Authorization for issuance of warrants.

DISTRICT COURTS: Issuance of warrants.

A district court judge may issue a summons or warrant for arrest without written authorization of a prosecuting attorney when the summons or warrant is based upon a complaint in the form of an appearance ticket.

Opinion No. 5033

July 9, 1976.

Mr. Donald A. Johnston, III
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You have requested my opinion whether warrants issued by district court judges pursuant to 1927 PA 175; MCLA 764.93; MSA 28.868(5), require the prior, written authorization of the county prosecuting attorney.

1927 PA 175, *supra*, provides:

If after the service of an appearance ticket and the filing of a complaint for the offense designated therein the defendant does not appear in the designated local criminal court at the time the appearance ticket is returnable, the court may issue a summons or a warrant of arrest based upon the complaint filed.

The general statutory authority for the issuing of warrants in criminal cases by district courts is found at 1927 PA 52; MCLA 600.8317; MSA 27A.8317 which states in pertinent part: