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OFFICIAL OPINION NO. 38

May 18, 1953.

Mrs. Hazel B. Hill, Director,
Bureau of Women and Children,
Division of Labor,
225 State House,
Indianapolis, Indiana.

Dear Madam :

We have your letter of April 28, 1953 requesting an official opinion which reads in part as follows :

“I am hereby respectfully requesting an official opinion on Acts 1921, Chapter 132, Sec. 26, p. 337.

“Can the Division of Labor designate local persons in places where violations are going on, as agents to carry out legally transmitted instructions from the Division of Labor?”

Section 26, Chapter 132 of the Acts of 1921 as found in Burns' Indiana Statutes Annotated (1948 Repl.) Section 28-526 reads as follows :

“It shall be the duty of the state industrial board, or its authorized inspectors and agents, to cause sections eighteen to twenty-eight (secs. 28-518—28-528), inclusive, of this act to be enforced and to cause all violators of the same to be prosecuted, and, for that purpose, the said board, its inspectors and agents are empowered to visit and inspect, at all reasonable hours, and as often as shall be practicable and necessary, all establishments to which this act relates. It shall be the duty of the state industrial board, its inspectors and agents to examine into all violations of laws made for the benefit and protection of labor of minors and to cause all violations of the same to be prosecuted. It shall be unlawful for any person to interfere with, obstruct or hinder, said board, its inspectors or its agents, while in the performance of their duties, or to refuse properly to answer questions asked by them in reference to any of the provisions thereof.”

The sections, 18 to 28, referred to in section 26 pertain to the restrictions and prohibitions in the employment of minors. At the time of the passage of this act, the industrial board was functioning under and pursuant to Chapter 106 of the Acts of 1915. By Chapter 58 of the Acts of 1919 the industrial board was authorized, with the consent and approval of the governor, to create a department of women and children.

The Indiana Workmen's Compensation Act of 1929 (Chapter 172) Acts of 1929, same being Burns' Indiana Statutes Annotated (1952 Repl.) Section 40-1201 *et seq.* created a new industrial board and among other things by Section 53 thereof all rights, powers and duties relative to the department of women and children were transferred and continued in the newly created industrial board.

Then in 1937 (Chapter 34) same being Section 40-2104a *et seq.* Burns' Indiana Statutes Annotated (1952 Repl.) a Division of Labor was created and within that division a Bureau of Women and Children. This Bureau was given supervision of women and children who are employed in industries and factories. Again, all the rights, powers and duties of the industrial board relating to the department of women and children was transferred to and conferred upon the Commissioner of Labor.

Chapter 334 of the Acts of 1945, same being Burns' Indiana Statutes Annotated (1952 Repl.) Section 40-2130 *et seq.* created the present Department of Labor. The Department of Labor, under this act, consists of the industrial board and the Division of Labor. The Division of Labor is administered by a Commissioner of Labor. Within the Division of Labor there was created a Bureau of Women and Children which was given supervision of women and children employed in industries and factories, and a Director was created to be in charge of said Bureau under the supervision or under the immediate charge of the Commissioner of Labor.

Section 9 of this act, same being Burns' Indiana Statutes Annotated (1952 Repl.) Section 40-2138 reads in part as follows:

“(a) All of the rights, powers and duties heretofore conferred by law upon the state bureau of inspection of the state of Indiana and which were subsequently con-

ferred upon the industrial board, by section 52 (Sec. 40-1503) of chapter 172 of the Acts of 1929, and which were transferred to the division of labor under chapter 34 of the Acts of 1937, are hereby continued in full force and effect and are hereby transferred to and conferred upon the commissioner of labor provided for by this act (Secs. 40-2130—40-2150), and shall be held and exercised by such commissioner under the provisions of this act.”

Thus, by virtue of the above mentioned acts the authority and responsibility for administering Section 26 of the Acts of 1921 is conferred upon the Commissioner of Labor. The Commissioner of Labor is given ample authority in Chapter 334 of the Acts of 1945, same being Sec. 40-2131, Burns' Indiana Statutes Annotated (1952 Repl.) to administer and enforce the various labor laws. In this regard I call your attention to the following excerpts from this Act:

“Sec. 2. * * * The commissioner of labor shall be the administrative and executive officer of the division of labor, shall supervise and direct the work of the division, have immediate charge of the administration and enforcement of all the laws, rules and regulations which the division is required by law to enforce and administer, shall have general charge of all inspections and investigations and shall perform such other duties as may be prescribed in this act. * * * The commissioner is hereby authorized and directed to classify and fix the minimum standards for personnel of the division and to formulate salary schedules with the approval of the governor for the services so classified.”

“Sec. 8. As the administrative head of the division of labor, and in addition to such other duties and powers as may be conferred upon him by law, the commissioner of labor is hereby authorized:

“(a) To make or cause to be made all necessary inspections to see that all of the laws and rules enacted or adopted for that purpose and which the division is required to enforce, are promptly and effectively administered and executed.

* * *

“(c) Except as otherwise provided by law, to employ, promote and remove clerks, inspectors and other employees as needed or as the service of the division of labor may require, and with the approval of the governor to, within the appropriation therefor, fix their compensation, and to assign to them their duties.”

“Sec. 16. The commissioner of labor and his authorized representative shall have the power and authority to enter any place of employment for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all of the labor laws of this state. No employer or owner shall refuse to admit the commissioner of labor or his authorized representatives to his place of employment.”

State officers have only such powers as are expressly delegated to them by the legislature.

State *ex rel.* Bingham v. Home Brewing Company of Indianapolis (1914), 182 Ind. 75, 105 N. E. 909;

State *ex rel.* Rabb v. Holmes (1924), 196 Ind. 157, 147 N. E. 622.

Unless a grant of power and authority is found in the statute, it must be concluded there is none.

State *ex rel.* Young v. Niblack (1951), 229 Ind. 596, 99 N. E. (2d) 839;

Davis v. Pelley (1952), 230 Ind. 248, 102 N. E. (2d) 910.

Whenever statutory boards or officers are acting under statutes prescribing their duties and conferring powers upon them they must adopt and follow the method prescribed by statute.

Hamilton v. City of Indianapolis (1946), 116 Ind. App. 342, 64 N. E. (2d) 303.

Therefore in accordance with the above cited statutes and cases it is my opinion that the Commissioner of Labor can

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designate local persons as agents if they are duly appointed and designated as his representatives or employees in accordance with the provisions of the above quoted statutes.

OFFICIAL OPINION NO. 39

June 17, 1953.

Miss Ruth V. Kirk,
Executive Secretary,
Board of Medical Registration and
Examination of Indiana,
538 K. of P. Building,
Indianapolis, Indiana.

Dear Miss Kirk:

Your letter of June 9, 1953 has been received and reads as follows:

“This Board has recently been confronted with determining whether or not the holder of a license to practice podiatry, under provisions of the Indiana Podiatry Law, was violating the Medical Practice Act, in that, he gave treatment by administering penicillin by injection in the arm to one of his patients for a foot ailment.

“The Board of Medical Registration and Examination of Indiana respectfully requests that an official opinion be rendered regarding the right of a licensed podiatrist, under provisions of Sections 1 and 2 of the Indiana Podiatry Law, or any other section thereof, to give treatment by penicillin or any other antibiotic injection, or by any procedure other than local application in connection with treatment of diseases or injury of the foot.”

The Podiatry Statute is Chapter 8 of the Acts of 1925, same being Burns' Indiana Statutes Annotated (1951 Repl.) Section 63-1401 *et seq.* Section 1 of said act is as follows:

“The term ‘podiatry’ (sometimes called chiropody), as used in this act shall be construed to mean the diag-