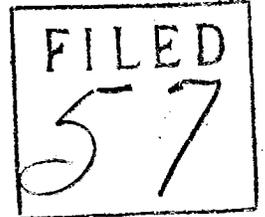


DEPARTMENT OF PUBLIC
HEALTH AND WELFARE:

Division directors the sole appointing
authorities within the meaning of the
State Merit System Act.



October 11, 1947

Honorable Samuel Marsh, Director
Department of Public Health and Welfare
State Office Building
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of October 4, 1947,
requesting an opinion from this department and reading as
follows:

"In the light of the fact that Senate
Bill #349 specifically provides that
no appointments or discharges shall be
made without the approval of the Direc-
tor of the Department of Public Health
and Welfare, will you please give me
your opinion as to whether I am the
sole appointing authority in the Depart-
ment, or whether the three division
directors are also appointing authori-
ties within the Department as the term
is used in the Merit System Act."

Laws of Missouri, 1945, page 947, Section 6, reads, in
part, as follows:

" * * * Each division director shall
appoint, subject to the approval of the
director of the department, all employees
in his division and may discharge, sub-
ject to the approval of the director of
the department, such employees after
proper hearing: Provided, such employ-
ment and discharge conform to practices
governing selection of employees in the
department of public health and welfare."

In connection with this section it will be noted that the division directors are the only ones given the power of appointment of employees in their respective division. There is no express provision giving the power to appoint to the director of the department, but only the right of approval of the division directors' appointments.

Does the department director have an implied power to appoint because he has been given the power of approval of appointments? In order to determine this question we should look to the meaning of the words "appoint" and "approval" as used in their usual and ordinary sense.

In 6 C. J. S., page 87, the word "appoint" is defined as follows:

"To allot, set apart, or designate; to choose or select; to nominate or authoritatively assign. It usually implies an appointing power or authority under which the appointment is made; * * *"

In 3 Words and Phrases, page 830, the word "approval" is defined as follows:

"The term 'approval' is susceptible of different meanings, dependent upon the subject-matter and context concerning which the term is employed and the object and purpose to be subserved or accomplished. Ordinarily, the term in its most obvious meaning is to commend, confirm, ratify, sanction, or to consent to some act or thing done by another. * * *"

In the case of State v. Caulfield, 62 S.W. (2d) 818, the court said, l.c. 823:

" * * * The construction we place upon the statute will find support in the illustrations and the judicial decisions following, all of which pertain to the word 'approve.'"

"Under a constitutional provision the Governor and the General Assembly participate in the enactment of laws (see Const. art. 4, sec. 24 et seq.). A bill passed by the House and Senate becomes a law when, and only when, approved and signed by the Governor, unless it be passed over his veto. Also the state treasurer is by another constitutional provision empowered to select the depositories of state moneys, subject to the approval of the Governor. It is clear that each of the matters instanced involves a participation on the part of two authorities or agents, but neither can exercise the whole power of the other.

"In reviewing a proceeding heard by the Public Service Commission and transferred thence to the circuit court, the latter must either affirm or set aside the order reviewed. Such limitations upon the scope of review of the actions of inferior agencies or tribunals are not unusual.

"Among the decisions involving matters cognate to those instanced above and bearing on the question now under consideration, the power of approval, reference will be made to two, these being typical of a number of others.

"In the case of *State v. Rhein, Treas.*, 149 Iowa, 76, loc. cit. 80, 127 N.W. 1079, 1081, a statute was under construction which authorized the county treasurer to select depositories 'to be approved by supervisors,' and the court held that the supervisors had no power of selection, saying: 'Had it been the purpose of the Legislature to empower the board to designate the depository, the easy and the obvious thing was to say so in plain unambiguous terms. * * * To "approve" or give "approval" is in its essential and most obvious meaning to confirm, ratify, sanction, or consent to some act or thing done by another.'

Thus, it seems to be the general rule that the grant of the power of approval does not carry with it the power to appoint by implication. The courts take the attitude that if the Legislature wanted the power to appoint to accompany the power to approve it should do so in expressed terminology.

Laws of Missouri, 1945, page 1159, Section 3 (1), reads as follows:

"'Appointing authority' means an officer or agency subject to this act having power to make appointments to positions under this act."

This section thus expressly defines the term "appointing authority" to mean an officer or agency having the power to make appointments. The Director of Public Health and Welfare does not have this power either expressly or by implication.

However, the Legislature has granted to the Director of Public Health and Welfare the right to designate the duties and responsibilities of employees. Laws of Missouri, 1945, page 948, Section 11, reads as follows:

"The director of public health and welfare shall set forth the duties and responsibilities of all superintendents, officers, assistants and other employees of the department; and shall provide for the preparation and issuing of such reports and other informational matters as may be necessary and expedient."

Laws of Missouri, 1945, page 1171, Section 25(a), reads as follows:

"Whenever an appointing authority proposes to fill one or more vacancies in a class of positions subject hereto, he shall submit to the Director, as far in advance of the desired appointment date as possible, a requisition for the certification of eligible persons from an appropriate register. The requisition shall contain a statement showing the title of the position to be filled, the duties thereof, and the necessary or desirable qualifications of the person to be appointed thereto, and

such other information as the regulations may require. Subject to the regulations adopted hereunder, the appointing authority may also designate special requirements of sex, domicile, or the possession of special skills. If the Director determines upon investigation that such requirements are in fact essential for the effective performance of the duties of the position, certification may be limited to persons on the eligible register who meet such requirements."

In order for the division directors to comply with Section 25(a) of the State Merit System Act, it would seem that they should first submit their requisition for employees to the department director for his approval of the qualifications and duties of the requested employees before submitting a requisition for the certification of eligible persons to the personnel director.

Upon receipt of the certification of eligibility from the personnel director, the division directors should make their appointments and submit them to the department director for his approval.

Conclusion.

It is the opinion of this department that the sole appointing authorities in the Department of Public Health and Welfare are the division directors, and that the department director is not an appointing authority within the meaning of the statute providing for a State Merit System Act.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General.

JRB:ml