

GOVERNOR:
EXECUTIVE ORDERS:
MERIT SYSTEM:

The Governor's Executive Order dated May 2, 1972, purporting to place certain employees of the Missouri Public Service Commission under the provisions of Chapter 36, the state merit system, is invalid.

OPINION NO. 302

December 19, 1972

Commissioner James F. Mauze
Missouri Public Service Commission
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Commissioner Mauze:

This opinion is in answer to your questions respecting the Governor's Executive Order dated May 2, 1972, which purports to place the employees of the Public Service Commission of Missouri, with some exceptions, under the merit system provisions of Chapter 36. Your first two questions deal with the implementation of such executive order, if valid, and the third question asks whether the order is valid. Because of the conclusion we have reached we will discuss only the question concerning the validity of the order.

Section 19 of Article IV of the Missouri Constitution provides:

"The head of each department may select and remove all appointees in the department except as otherwise provided in this constitution, or by law. All employees in the state eleemosynary and penal institutions, and other state employees as provided by law, shall be selected on the basis of merit, ascertained as nearly as practicable by competitive examinations; provided that any honorably discharged member of the armed services of the United States who is a citizen of this state shall have preference in examination and appointment as prescribed by law."
(Emphasis added)

Further, Section 21 of Article III of the Constitution provides:

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"The style of the laws of this state shall be: 'Be it enacted by the General Assembly of the State of Missouri, as follows.' No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose. Bills may originate in either house and may be amended or rejected by the other. Every bill shall be read by title on three different days in each house."
(Emphasis added)

Thus, in our view, there can be no doubt that an executive order is not a "law". State ex rel. McKittrick v. Missouri Public Service Commission, 175 S.W.2d 857, 861 (Mo. Banc 1943). Cf., State v. Atterbury, 300 S.W.2d 806 (Mo. Banc 1957).

We note that the executive order does not purport to be a "reorganization plan" within the provisions of Sections 26.500, RSMo et seq., which require submission of such a plan to the legislature.

In addition, a review of approximately two hundred pages of the debates of the 1944 Constitutional Convention of Missouri indicates the considerable attention given by the Convention delegates to the drafting of Section 19, Article IV and leads us to conclude that the intent was that the legislature is the only body considered to have the authority to bring "other state employees" within the merit system. (See for example, pages 4397 and 7276, second typing, Constitutional Debates).

Finally, our examination of the statutes and other constitutional provisions does not reveal any express authority for such an executive order and we do not believe that such authority can be implied. While the supreme executive power is vested in the Governor, Section 1, Article IV, Missouri Constitution, he is nevertheless still a mere executive officer and his general authority is narrowly limited. Section 1, Article II, Missouri Constitution; 38 Am.Jur.2d, Governor, §4.

It is clear that the legislature has neither directly nor indirectly authorized the Public Service Commission to be under the merit system.

We are aware that over the past decade there have been several executive orders purporting to place various state agencies under a merit system. We wish to make it clear that the validity of such executive orders, most of which are involved in the area of federal-state cooperation, is not determined here.

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CONCLUSION

It is the opinion of this office that the Governor's Executive Order dated May 2, 1972, purporting to place certain employees of the Missouri Public Service Commission under the provisions of Chapter 36, the state merit system, is invalid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive, flowing style with a large initial "J".

JOHN C. DANFORTH
Attorney General