

MERIT SYSTEM: The Personnel Advisory Board of Missouri
COMPENSATION: has the authority to authorize, by rule,
RULES & REGULATIONS: that appointments under the merit system
may be made at a rate of pay higher than
the minimum for the class depending on bona fide recruitment needs
which may vary according to location.

OPINION NO. 65

January 16, 1974

Mr. Harold E. Cox, Chairman
Personnel Advisory Board
Missouri Personnel Division
117 East Dunklin Street
Jefferson City, Missouri 65101



Dear Mr. Cox:

This opinion is in answer to your request asking:

- "A. Is the following portion of Rule 6.4 (a) of the Rules and Regulations of the Missouri Personnel Advisory Board in conformance with Sections 36.140.1 and 36.140.2 of H. B. #133, 77th General Assembly?

'If the Director finds that the beginning rate of pay for a given class of positions is insufficient to meet the minimum recruitment needs of one or more appointing authorities, either statewide or in selected areas of the State, he may approve the general appointment of employees in such class at a higher rate of pay subject to the following conditions:

- (1) the new appointment rate of pay shall apply to all positions in the class and area involved;

. . . '

- "B. As long as a uniform minimum and maximum rate of pay applies to each class of positions, does H. B. #133, 77th General Assembly, prohibit appointment in a given

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area at a higher rate within the range of pay rates than is used for appointment in other areas, providing that this practice conforms to the requirements of Rule 6.4 (a)?"

Subsection (a) of Rule 6.4 of the Personnel Advisory Board, to which you refer, provides in full:

"ADMINISTRATION OF PAY PLAN

- (a) Appointment Rate. The minimum rate of pay for a class shall normally be paid upon appointment to the class. In individual cases when the qualifications of an applicant substantially exceed those normally expected of beginning employees in the class involved, the Director may approve appointment at a rate above the minimum rate, not to exceed that which is being paid to present employees with comparable qualifications. In such cases the appointing authority must submit a written request outlining the special qualifications which justify a higher induction rate and certifying that all higher ranking eligibles on the register have been offered the same rate of pay. If a former employee is re-employed in a class in which he was previously employed, the appointing authority may make an appointment at the same pay step on which the employee had been paid at the termination of his service. If a provisional employee subsequently receives an appointment to a position in the same class after regular certification from a register of eligibles without interruption in his service to the State, he shall be eligible to continue in his original appointment at the same rate of pay he was receiving as a provisional employee, provided that all higher ranking eligibles have been offered the same rate. If the Director finds that the beginning rate of pay for a given class of positions is insufficient to meet the minimum recruitment needs of one or more appointing

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authorities, either statewide or in selected areas of the State, he may approve the general appointment of employees in such class at a higher rate of pay subject to the following conditions:

- (1) the new appointment rate of pay shall apply to all positions in the class and area involved;
- (2) any employees of such class who are being paid a lower rate of pay than the new appointment rate shall be adjusted at least to the new rate; and
- (3) additional adjustments may be approved, as available funds allow, to restore the relative position of employees within the pay range for the class involved." (Emphasis added)

House Bill No. 133, 77th General Assembly, which amended Section 36.140, RSMo 1969, provides:

"1. After consultation with appointing authorities and the state fiscal officers, and after a public hearing, the director shall prepare and recommend to the board a pay plan for all classes subject to this law. The pay plan shall include, for each class of positions, a minimum and a maximum rate, and such intermediate rates as the director considers necessary or equitable. In establishing the rates, the director shall give consideration to the experience in recruiting for positions in the state service, the rates of pay prevailing in the state for the services performed, and for comparable services in public and private employment, living costs, maintenance, or other benefits received by employees, and the financial condition and policies of the state. These considerations shall be made on a statewide basis and shall not make any distinction based on geographical areas or urban and rural conditions. The pay plan shall take effect when approved by the board and the governor, and each

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employee appointed to a position subject hereto after the adoption of the pay plan shall be paid at one of the rates set forth in the pay plan for the class of positions in which he is employed; provided, that the state comptroller certifies that there are funds appropriated and available to pay the adopted pay plan. The pay plan shall also be used as the basis for preparing budget estimates for submission to the legislature insofar as such budget estimates concern payment for services performed in positions subject hereto. Amendments to the pay plan may be recommended by the director from time to time as circumstances require and such amendments shall take effect when approved as provided by this act. The conditions under which employees may be appointed at a rate above the minimum provided for the class, or advance from one rate to another within the rates applicable to their positions, shall be determined by the regulations.

"2. Upon the effective date of this act, the minimum and maximum rate for each class of positions shall be made uniform throughout the state and shall be set at the highest minimum and maximum rate then in effect in this state for that class of positions. Any subsequent change in rates shall be made on a uniform statewide basis. No merit system employee shall receive more or less compensation than another merit system employee solely because of the geographical area in which he lives or works.

"3. No merit system employee shall receive any decrease in compensation due to the provisions of this act." (Emphasis added)

The purpose of the amendments to Section 36.140 was to eliminate the pay differential which existed between the metropolitan and so-called nonmetropolitan areas and thus provide for statewide uniformity in pay ranges.

The amendment, above, retained the language, last sentence of subsection 1:

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". . . The conditions under which employees may be appointed at a rate above the minimum provided for the class, or advance from one rate to another within the rates applicable to their positions, shall be determined by the [Personnel Board] regulations."

Two of the primary reasons in the past for hiring at a range higher than the classification minimum have been because of the unusual qualifications of the applicant and because, as you indicate, of the necessity to meet the competitive rate in any location, whether metropolitan or nonmetropolitan, for the type of services sought.

In making such amendments to Section 36.140, the legislature eliminated the consideration of local prevailing rates of pay in setting the classification range by expressly providing that the Board consider, among other things, "the rates of pay prevailing in the state for the services performed." The legislature also emphatically directed that the ". . . considerations shall be made on a statewide basis and shall not make any distinction based on geographical areas or urban and rural conditions. . . ." The conditions referred to under such provisions however relate to the establishing of the pay ranges and not to the hiring within such ranges. In this latter respect the legislature retained the previous statutory language, as we have noted above, authorizing the Board to determine, by regulation, the conditions under which employees may be appointed at a rate above the minimum for the class. Presumably, as no change was made in this provision, the legislature approved the existing practice and procedure of the Board under Rule 6.4 in inducting at such beginning rates, or steps, within the job classifications as is necessary to meet bona fide local recruitment needs. Notably, the variation due to recruitment needs would not affect the established class minimum or maximum which would remain uniform throughout the state and would not distinguish between urban and rural areas. Any induction pay variations will be based on actual recruitment requirements thus permitting the flexibility required in hiring for a particular position at any location.

A further indication of legislative intent is found in the provision added in subsection 2 of Section 36.140 which states that ". . . No merit system employee shall receive more or less compensation than another merit system employee solely because of the geographical area in which he lives or works." In our view differentials based on actual position recruitment needs are not based solely on a geographical area.

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Of course, it should be borne in mind that at a certain point the Board will have to determine the effect of changes in the prevailing rates of pay on a statewide basis and redetermine the minimum and maximum pay for such class or classes under subsection 1 of amended Section 36.140.

CONCLUSION

It is the opinion of this office that the Personnel Advisory Board of Missouri has the authority to authorize, by rule, that appointments under the merit system may be made at a rate of pay higher than the minimum for the class depending on bona fide recruitment needs which may vary according to location.

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

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General