

DEPARTMENT OF SOCIAL SERVICES:
REORGANIZATION ACT:
MERIT SYSTEM:

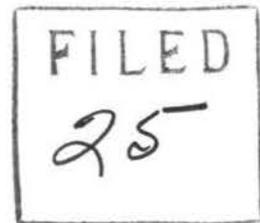
No merit status can be lost
by the transfer or realignment
of a unit or position under
the Reorganization Act where

the essential identity of the position or unit is retained and
the position or unit was within merit coverage on the effective
date of the Act. A position which was subject to the provisions
of the merit system law on the effective date of the Reorganiza-
tion Act cannot be named as one of three "exempt" positions by
a division director under Section 13.1 of that Act.

OPINION NO. 25

February 28, 1975

Mr. Mark L. Edelman
Deputy Director
Office of Administration
State Capitol Building, Room 120
Jefferson City, Missouri 65101



Dear Mr. Edelman:

This is in response to your questions as stated:

- "(a) Can merit status be lost by transfer of a unit or position from one department to another or realignment with a department under reorganization as long as the position or unit retains its identity (functions, duties, responsibilities, etc.) to a substantial degree.

- "(b) In the Department of Social Services, where three exempt positions can be named in each 'division', can a position which is identified as one which was previously subject to the provisions of the Merit System Law be named as one of the three exempt positions and the incumbent thereof removed from merit coverage? Or, does the continuity of merit coverage provision (Section 1.6(8) of the Reorganization Act) apply?"

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I

The purpose of the Omnibus State Reorganization Act of 1974, C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly (hereinafter referred to as Reorganization Act), as stated in Section 1.4 of that law, was to:

". . . provide for the improved accountability in performance of service to the citizens of the state and for the most efficient and economical operations possible in the administration of the executive branch of state government. . . ."

The Reorganization Act was not enacted to alter or terminate any merit coverage provided state employees, as was clearly expressed in Section 1.6(8), as follows:

"Nothing in this act shall be construed so as to remove any state agency or unit thereof or any position of employment from coverage under the provisions of the merit system law if the agency or position was covered by that law on the effective date of this act."

In answer to your first question, it is submitted that the language of Section 1.6(8), quoted above, controls the status of any position or unit transferred or realigned to a new organizational entity if such position or unit was previously within the coverage of the merit system and retains its essential identity. Any holding to the contrary would be in direct contravention to the plain intent of the legislature when it included Section 1.6(8) within the language setting forth the scope of this Act.

Because of this, it is the opinion of this office that no merit status can be lost by the transfer or realignment of a position or unit under the Reorganization Act where the essential identity of the position or unit is retained and the position or unit was within merit coverage on the effective date of the Act.

II

Section 13.1 of the Reorganization Act provides as follows:

". . . All employees of the department of social services shall be covered by the provisions of chapter 36, RSMo, except the director of the department and his secretary, all

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division directors and their secretaries, and no more than three additional positions in each division which may be designated by the division director."

Your second question asks whether, under Section 13.1, quoted above, a position which was previously within the merit system can be named as one of three "exempt" ones by a division director, therein removing the incumbent from merit coverage in apparent conflict with Section 1.6(8) of the Reorganization Act, quoted above.

It is the view of this office that Sections 1.6(8) and 13.1 are entirely reconcilable if the latter section is construed to mean that a division director can name a position as an "exempt" one only if it was not within the merit system on the effective date of the Reorganization Act. This interpretation would be in conformity with the preferred rule of construction that various provisions of a statute are to be read to avoid conflict when possible (See, e.g., State ex rel. Dean v. Daues, 14 S.W.2d 990 (Mo. 1928) and would also be in agreement with a prior opinion of this office in which we held that the legislature, in enacting Section 1.6(8) of the Reorganization Act, intended that positions which had merit status on the effective date of the Act remain under the merit system. (Addendum to Opinion of Attorney General, No. 220, Bond, 1974).

Further, it should be noted that this interpretation would not render the exemption privilege meaningless since it has been previously held by this office that the Director of the Department of Social Services could create new divisions and staffing positions under a departmental plan, and the language of Section 13.1 would be applicable to the new divisions created thereunder. (Attorney General Opinion Letter No. 80, Graham, 1975). By clear implication then, the exemption privilege would have effect in staffing such new positions, as they would not have been within the merit system on the effective date of the Reorganization Act.

Therefore, in answer to your second question, it seems apparent that the three positions in each division of the Department of Social Services authorized to be exempted from the merit system by Section 13.1 of the Reorganization Act do not include those positions which were within merit coverage on the effective date of the Act and such positions retain their merit status.

CONCLUSION

It is the opinion of this office that no merit status can be lost by the transfer or realignment of a unit or position under

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the Reorganization Act where the essential identity of the position or unit is retained and the position or unit was within merit coverage on the effective date of the Act.

It is the further opinion of this office that a position which was subject to the provisions of the merit system law on the effective date of the Reorganization Act cannot be named as one of three "exempt" positions by a division director under Section 13.1 of that Act.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Timothy Verhagen.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 220
6-11-74, Bond

Op. Ltr. No. 80
2-6-75, Graham