

PENSIONS:
RETIREMENT:
CLEAN WATER COMMISSION:
DEPARTMENT OF NATURAL RESOURCES:
STATE EMPLOYEES' RETIREMENT SYSTEM:

Under Section 104.380.1(1), RSMo Supp. 1973, the Director of the Department of Natural Resources, and not the Clean Water Commission, is the "head of the department"

for purposes of retention of a director of staff to the Commission beyond normal retirement age.

OPINION NO. 137

May 16, 1975



Mr. James L. Wilson, Director
Department of Natural Resources
Jefferson State Office Building
Jefferson City, Missouri 65101

Dear Mr. Wilson:

This is in response to your request for an official opinion of this office concerning the question whether the Director of the Department of Natural Resources or the Clean Water Commission is the head of the department for purposes of retention of a director of staff to the Commission beyond normal retirement age under Section 104.380.1(1), RSMo Supp. 1973.

Section 104.380.1(1) provides:

"1. Each member shall retire at the end of the month during which such member shall reach normal retirement age with a normal annuity, except that

(1) Any employee, upon written request, with the written approval of his department head filed with the board in advance of the retirement date, may be retained for successive periods of one year until age seventy, when retirement shall be compulsory;"

The position of director of staff in the Department of Natural Resources is provided for in Section 10.2, "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 S.B. 1), and any person holding said position is both an employee and a member within the meaning of the Missouri State Employees' Retirement System. Section 104.310(15) and (20), RSMo Supp. 1973. Also, normal retirement age is sixty-five. Section 104.310(22).

Mr. James L. Wilson

Department is defined in the retirement law as:

". . . any department, institution, board, commission, officer, court or any agency of the state government receiving state appropriations including allocated funds from the federal government and having power to certify payrolls authorizing payments of salary or wages against appropriations made by the federal government or the state legislature from any state fund, or against trusts or allocated funds held by the state treasurer;" Section 104.310(11)

There presently are two appropriations concerning the Clean Water Program, Sections 4.630 and 4.635, C.C.S.H.B. No. 1004, Second Regular Session, 77th General Assembly, which both read in part:

"To the Department of Natural Resources For the Clean Water Commission"

Furthermore, C.C.S.H.B. No. 1004 begins with:

"There is appropriated out of the State Treasury, chargeable to the fund for the agency or its legal successor for the purpose designated, for the period beginning July 1, 1974 and ending June 30, 1975, as follows:"

This language merely recognizes that the Reorganization Act may affect certain appropriations. In this instance, the appropriations for the Clean Water Program appropriately reflect that the Clean Water Commission was transferred to the Department of Natural Resources by a "type II transfer" (Section 10.3, S.B. 1), which is defined as:

"Under this act a type II transfer is the transfer of a department, division, agency, board, commission, unit, or program to the new department in its entirety with all the powers, duties, functions, records, personnel, property, matters pending, and all other pertinent vestiges retained by the department, division, agency, board, commission, unit or program transferred subject to supervision by the director of the department. Supervision by the director of the department under a type II transfer shall include,

Mr. James L. Wilson

but shall be limited to: budgeting and reporting under subdivisions (4) and (5) of subsection 6 of this section; to abolishment of positions, other than division, agency, unit or program heads specified by statute; to the employment and discharge of division directors; to the employment and discharge of employees, except as otherwise provided in this act; to allocation and reallocation of duties, functions and personnel; and to supervision of equipment utilization, space utilization, procurement of supplies and services to promote economic and efficient administration and operation of the department and of each agency within the department. Supervision by the director of the department under a type II transfer shall not extend to substantive matters relative to policies, regulative functions or appeals from decisions of the transferred department, division, agency, board, commission, unit or program, unless specifically provided by law. The method of appointment under type II transfer will remain unchanged unless specifically altered by this act or later acts." Section 1.7(1)(b), S.B. 1

It is apparent that the purpose of a type II transfer is to remove from policy making commissions, such as the Clean Water Commission, the burden of administrative problems, such as fiscal matters, so that the commissions will only have to concentrate their time and efforts on their real reason for being, that is, setting fundamental policy, such as clean water regulations. This is consistent with Section 10.1 of S.B. 1 concerning the requirement that the Director of the Department of Natural Resources "faithfully cause to be executed all policies established" by the Clean Water Commission. See also, Attorney General Opinion No. 235, June 18, 1974, Bond, where this same discussion is made concerning the position of director of staff.

Accordingly, it is our opinion that pursuant to S.B. 1 the Director of the Department of Natural Resources is, under the definition of department in Section 104.310(11), the department head who has the authority to approve extension beyond normal retirement age under Section 104.380.

That is so regardless of the authority of the Commission to give its approval, which is a continuing power by virtue of power of removal, to any appointment of director of staff. This power

Mr. James L. Wilson

of approval and removal has no relationship to extension beyond retirement under Section 104.380.

CONCLUSION

It is the opinion of this office that under Section 104.380.1 (1), RSMo Supp. 1973, the Director of the Department of Natural Resources, and not the Clean Water Commission, is the "head of the department" for purposes of retention of a director of staff to the Commission beyond normal retirement age.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 235
6-18-74, Bond