

SECRETARY OF STATE: Official Manual should contain names and salaries of employees during the preceding biennium. (30)

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October 21, 1941

Honorable Dwight H. Brown  
Secretary of State  
Capitol Building  
Jefferson City, Missouri



Dear Mr. Brown:

We are in receipt of your letter of September 10, 1941, submitting several questions concerning your duties in preparing the Missouri Manual. You also request our interpretation of Section 15002, Revised Statutes of Missouri, 1939, as amended by House Bill 230, passed by the recent General Assembly.

Your first question is as follows:

"We would like to know whether the heads of departments, boards, bureaus, commissions, etc. are expected to report to us the employment of a person and the detailed data required before that person is eligible to the payroll."

We think this question is specifically answered by Section 15002, Laws of Missouri, 1941, page 690, which we quote:

"There shall be published in said manual the name, salary and post office address, and previous occupation, including street and number, of every officer and employee, of this state, and it shall be unlawful for any officer of this state to pay or authorize the payment of a salary to any appointee or employee unless

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he shall first file with the secretary of state, for publication in the manual, the name, salary, post office address and previous occupation of such employee."

Generally, the word "shall" is mandatory. State ex rel. McKittrick v. Wymore, 119 S. W. (2d) 941, 343 Mo. 98, 119 A. L. R. 710. By its use of the word "shall" throughout the above section, we must conclude that the Legislature intended that no employee of the State of Missouri, or of any department, board, bureau or commission, constituting a part of the state executive or administrative government, who receives a salary may receive such salary unless his name, amount of compensation and previous occupation shall be first submitted to the Secretary of State for publication in the Manual.

Your second question is as follows:

"We would like to know whether this law contemplates this same officer reporting to us any change in the status of the employee. For instance, if the salary is changed, then the information given to the department originally does not agree with the later facts, -- the facts, for instance, at the time the Blue Book is being prepared for publication."

In construing statutes, the primary rule is to ascertain the lawmakers' intent and to promote the object and manifest purpose of the statute. Artophone Corporation v. Coale, 135 S. W. (2d) 343. The original purpose for the publication of the Missouri Manual was to give the people of this state historical, political and statistical information with regard to the state and national governments. By the amendment in 1941, in which the Legislature inserted the word "salary" in Section 15002, supra, it is clear that the intent was to permit the people of the state to be advised as to the disposition of all money disbursed for salaries to the employees of the state. The language

used is clear and unambiguous, and it is therefore our opinion that if the salary of any employee is increased or decreased, the proper officer must file a report of such change with the Secretary of State for publication in the Manual before such change may become effective.

Your third question is as follows:

"We would like to know whether the departments are expected to report to us the regular personnel which is employed at a per annum salary, payable monthly, or should also report every person who at any time, under any circumstances, for any period is employed. Charged as we are with the responsibility of the publication of the Blue Book, we are mindful that if it is necessary to publish the name of every temporary employee, the Blue Book will become very voluminous and a very costly publication. To illustrate; I am told that at the peak the Highway Department may have as many as 5,000 laborers, and, counting the labor turnover, in the period of a year the total may be 8,000 to 10,000. These persons may be employed for one or more days, a period of weeks, or a few months."

The title of House Bill 230, which announces its evident purpose, is as follows:

"AN ACT to amend Section 15002, Article II, Chapter 120, of the Revised Statutes of Missouri, 1939, relating to certain information in the official manual and providing that the salaries of all state employees be published therein."

The word "employee" is general, and has been held to include all classes of workers (Volume XIV, Words and Phrases, page 456), but the word "salaries," as used in both Section 15002 and the title to said section in the amendment made by House Bill 230, has been given a definite meaning by our Supreme Court and courts in many other jurisdictions.

In *Henderson v. Koenig*, 168 Mo. 356, l. c. 367, we find the following:

"Salary is defined to be: 'A periodical allowance made as compensation to a person for his official or professional services or for his regular work.' (Standard Dict.)

"Salary is regarded as a per annum compensation. (Bouvier Law Dict.) And to the like effect see an exhaustive review of the subject in *People ex rel. v. Myers*, 42 Alb. L. J. 332." (Italics ours)

In other jurisdictions, the distinction between a salary and a wage has been even more clearly defined. We believe the following definitions found in *Words and Phrases*, Volume XXXVIII, clearly illustrate this distinction, l. c. 51:

"'Salary' refers to a superior grade of services and implies a position or office, and suggests something higher, larger, and more permanent than 'wages.' *First Nat. Bank v. Barnum*, 160 F. 245, 247.

"The word 'salary' imports a specific contract for a specific sum for a specified period of time, while 'wages' are compensation for services by the day or week. *Blick v. Mercantile Trust & Deposit Co.*, 77 A. 844, 846, 113 Md. 487.

"Under Income Tax Act 1931, Section 2B, 38 Stat. 167, providing that net income shall include income from salaries, wages, or compensation for personal services, 'salaries' indicates a periodical payment as compensation for regular employment, while 'wages' generally applies to manual labor. Merriam v. United States, C. C. A. N. Y., 282 F. 851, 855.

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"'Wages' is usually restricted to sums paid as hire or reward to domestic or menial servants and to sums paid to artisans, mechanics, laborers, and others employed in various manual occupations, while 'salary' has reference to the compensation of clerks, bookkeepers, other employees of like class, officers of corporations, and public officers. Fitzgerald Furniture Co. v. Metropolitan Life Ins. Co., 272 Ill. App. 138.

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"'Wages,' in its ordinary acceptation, has a less extensive meaning than 'salary,' and is usually restricted to sums paid as hire to domestic or menial servants and to artisans, mechanics, laborers, and others employed in various manual occupations, while 'salary' has reference to the compensation of clerks, bookkeepers, other employes of like class, officers of corporations, and public officers. Massie v. Cessna, 88 N. E. 152, 154, 239 Ill. 352, 130 Am. St. Rep. 234.

"Salary is the compensation given to a hired person for service, and is a synonymous convertible term with 'wages,' though use and acceptation have given to the word 'salary' a significance somewhat different from the word 'wages,' in this: that the former is understood to relate to position or office -- to be the compensation given for official or other services as distinguished from wages, the compensation for labor. Bell v. Indian Live Stock Co., Tex., 11 S. W. 344, 346, 3 L. R. A. 642."

While it is impossible to lay down a rule which would govern every instance, we think it clear that the temporary laborers described in your question undoubtedly receive wages rather than salaries and do not receive an annual compensation. They should not, therefore, in our opinion be included in the Missouri Manual as employees receiving fixed salaries.

Your last question follows:

"We are also confronted with this question; whether or not the current Blue Book should contain all of the personnel of the previous administration who continued under employment into the present biennium as well as their successors. You can see that in some instances there would be a virtual duplication of job listings in some of the departments."

Since, as we have pointed out above, the salaries, addresses and previous occupations of all employees shall be filed "with the secretary of state, for publication in the manual \* \* \*," we are of the opinion that the names and salaries, with the other information required by the

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statute, of all employees during the biennium immediately preceding the publication of each official Manual must be included in such Manual. However, due to the fact that House Bill 230, which requires the publication of salaries of employees, did not become effective until October 10, 1941, it is the opinion of this office that you are required to publish only the salaries of such employees of the state as have been certified to you since the effective date of House Bill 230, and such as may be furnished you in time to be included in the next publication of the Missouri Manual.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

RLH:VC