

BOARD OF HEALTH:

May select same employees to administer merit system that may already be employed to administer some other merit system, but may not maintain joint records, etc.; may not enter into joint merit system even though upon request of Children's Bureau.

January 16, 1942

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Dr. James Stewart
State Health Commissioner
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of November 27, 1941, which is in part as follows:

"November 5th, I wrote you a letter asking your office to review your recent opinion on House Bill #501, regarding the establishment of a single merit system agency or a joint merit system. On November 13th, 1941, I received a letter from your office asking that we be more definite on our word 'cooperating' with other merit systems in the State.

"It is the desire of this Department to follow your indications as to the legality of setting up and operating the merit system. It was pointed out to us, by the Children's Bureau, in Washington, D. C., that the Health Departments, in other states, were cooperating in what they termed 'joint merit systems', i. e., each individual agency paid for parttime services of a single merit system council, of a single merit system supervisor, and paid its pro rata share in maintaining the necessary office space, equipment, and office personnel so that the duties and

functions of the merit system established would carry out the intent of the merit system for each individual agency that was cooperating. By this method of function the total cost to the various agencies would be materially reduced.

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"The Children's Bureau had a policy in existence at the time House Bill #501 was enacted in several other states that complied with this policy by entering into single merit systems and joint merit systems. If the Children's Bureau requests the State Board of Health to enter into a joint merit system, would it not be the right and duty of the State Board of Health to comply with this regulation?

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"It should be noted that the appointment of personnel of any Department utilizing the merit system council is made by the Department itself, and the rules and regulations of the merit system council are formulated insofar as they apply to that particular department, by that department itself.

"* * * * *"

On September 15, 1941, we rendered an opinion, to Mr. A. L. Landwehr of your Department, respecting the establishment of a merit system under House Bill #501, Laws of Missouri, 1941, page 370. In that opinion we said, page 11, as follows:

"In connection with this you ask in your request whether House Bill 501 allows the Board of Health 'to come under the State

Merit System or whether it will be necessary to set up' its own merit system. We are of the opinion the Board will have to set up a merit system of its own. There is no such thing as a State Merit System in Missouri. The only other merit system in operation in this state are those carried on by the Unemployment Compensation Commission and the Social Security Commission. The first has for its authority Section 9426 d, R. S. Missouri, 1939, which relates to the Unemployment Compensation Commission alone. So far as we are informed, unless the Sixty-first General Assembly took some action, the Social Security Commission has no statutory authority supporting the merit system there in use. At any rate, neither plan is available to the Board of Health. House Bill 501 adopts statutes and regulations of the Federal Government, not of the Unemployment Compensation Commission or the Social Security Commission.

"We think this holds true even if the Federal regulations permit the Board to adopt or come under one of the merit systems already in operation in this state. The reason for this is the fact that House Bill 501 imposes a duty upon the State Board of Health which it must perform. To merely come under either of the other merit systems in operation in this state, would be a delegation by the board to another governmental agency of this state of its authority in this respect. This, we think, the board may not do. Further, to do so, would violate the intent of the Legislature of this State. To date that body has enacted House Bill 501 and Section 9426 d, R. S. Missouri, 1939, on the subject of merit systems. The fact there are two separate acts in no way referring to each other, indicates an intention

on the part of the General Assembly to require separate merit plans. That intention is, of course, controlling."

What was there said was, of course, ruled in a general way, since we had no specific outline before us as to what the Board of Health considered a joint merit system. The plan, which you outline in your letter of November 27th, does not, in our opinion, run contrary to what we have heretofore expressed to be our view as to the legal authority granted by House Bill 501. As we view the law, there is nothing to prohibit the State Board of Health from selecting the same persons to administer its merit system as have already been selected by some other department to administer another merit system. By this, however, we do not mean that joint employee registers and like records can be maintained from which, for example, the State Board of Health, the Social Security Commission and the Unemployment Compensation Commission would all pick similar employees. In order that there be a separate merit system for the State Board of Health, we feel that it would be necessary for the Board to adopt its own rules and regulations, which would outline the method of operation with respect to the merit system for the employees of the Board of Health and to establish their own qualifications and examination procedure.

After that is done, the Board may appoint any persons it sees fit to administer said plan but, in the administration of such plan, the same separation would have to be observed and the persons qualifying by examination as eligible for positions in the Board of Health would have to be listed upon a register which pertains only to employees for the Board of Health, and which would have to be used solely for that purpose. To better illustrate, separation in administration should be observed to the extent that, if the State Board of Health should decide it no longer desired its Merit System to be administered by the same employees or persons that are also administering the Merit System of some other department, it could pick up its files and records, place them in the hands of another administrator, and that person could go right ahead, with no break occurring in the continuity of operation, and with no need to sift and separate

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that which pertains to the Board of Health from that which pertains to some other department.

Your second question is whether or not if the Federal Children's Bureau requested the Board of Health to enter into a joint merit system, would it be within the authority of the State Board of Health to comply with that request. What we said on this subject in our previous opinion is completely applicable to this question, and we do not feel, under the law, the State Board of Health would be authorized to do what you suggest, even though that should be requested by the Federal Children's Bureau.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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