

GEOLOGIST: May employ assistants on monthly salary basis, if salary is not in excess of daily maximum.

June 15, 1944.



Hon. Forrest C. Donnell,  
Governor of Missouri,  
Jefferson City, Missouri.

Dear Governor Donnell:

Your letter of May 23, 1944, presents for our opinion the following question:

May the state geologist appoint a necessary assistant to be compensated at the rate of \$225.00 per month?

Section 14888, R. S. Mo. 1939, provides:

"The state geologist may, with the approval of the board, appoint other necessary assistants whose pay shall not exceed seven dollars and fifty cents per day. He shall also have the power to negotiate for such chemical work, chemical apparatus, and chemicals as may be necessary, and may, from time to time, with the approval of the board, have such work done. He may also, with the approval of the board, employ special assistants in paleontology, provided it be deemed necessary, whose pay shall not exceed seven dollars and fifty cents per day."

The proposed compensation of \$225.00 per month evidently was arrived at by computing the pay on the basis of a thirty-day month. However, fixing the compensation on this basis would include Sundays and other days on which these assistants would not actually be engaged in the performance of functions assigned to them by the State Geologist. Thus the question presented requires us to determine whether the above section precludes a monthly salary and requires their compensation to be based on the number of days of actual work.

Ordinarily the words "per day" when used in connection with compensation means pay for a day's services. *Scroggie v. Scarborough*, 160 S.E. 596, 599 (S.C.). But we do not think such words are to be

given that connotation here. Section 14888 authorizes the appointment of assistants, but makes no definite prescription as to the term of the position. Section 14890, by granting the state geologist "full control over his assistants \* \* \* (with) power to remove them when deemed necessary" necessarily makes the tenure of such assistants depend upon the pleasure of the geologist. In view of this, to consider the words "per day" in their ordinary significance would limit the tenure from "at the pleasure" to "from day to day." In Colorado Telephone Co. v. Fields, 110 P. 571 (N.M.) a contract with the City of Albuquerque provided that the telephone company would have a rate for "one party residence: \$3600. per annum". Under such contract the company contended the user must contract for the service on a yearly basis. The court held (quoting the sylibi):

"\* \* \*the term 'per annum' should be construed to designate the rate of charge, and not to imply that subscribers must make contracts on an annual basis."

Applying this analogous ruling to our situation leads to the conclusion that the words "per day" do not limit the tenure of the assistants to the geologist to a day to day basis.

However, the idea of holding a position of indefinite tenure, coupled with the thought of being compensated for fulfilling the duties of the position only for the days actually worked, seems absurd. To say the least, it is highly illogical to have the compensation entirely unrelated to the tenure. We are informed that these assistants have been paid on a flat monthly basis since 1889 under this statute and its predecessor which provided for \$5.00 per day. In Automobile Gasoline Co. v. City of St. Louis, 32 S.W. (2d) 281, 283 (Mo. Sup.) it is said:

"The construction of a statute by those charged with the duty of enforcing it, when it has long prevailed, while not binding \* \* \* is entitled to weight where the meaning is uncertain."

Again in In Re Bernay's Estate, 126 S.W. (2d) 209, 217 (Mo. Sup.) it is stated that such a construction -

"\* \* \* should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous."

Beyond doubt this statute is uncertain in meaning, and we are not convinced that the construction acted upon is clearly wrong. Particularly are we not convinced, when to upset that construction will lead to an absurdity and will convict the Legislature of establishing a position of tenure with the compensation being unrelated to said tenure.

In view of this, we think the administrative construction long acted upon should be sustained and are of the view that the purpose of the language "whose pay shall not exceed seven dollars and fifty cents per day" as used in Section 14888 in fixing the compensation of these assistants was to fix the basis for computing the compensation and to place a maximum limitation thereon.

CONCLUSION

It therefore is permissible for the State Geologist, with the approval of the Governor, to fix the compensation of the other necessary assistants he appoints on a monthly salary basis, so long as the salary prescribed does not exceed \$7.50 per day for the period in which such assistants hold their positions.

Respectfully submitted,

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APPROVED:

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