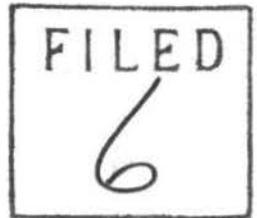


STATE SERVICE: Re: Salary of State Service Officer
OFFICER:



August 8, 1945

Mr. Roy Beaman
State Service Officer
State Office Building
Jefferson City, Missouri

Dear Mr. Beaman:

We have your letter of July 19, 1945, requesting an opinion of this department, which letter reads as follows:

"In 1942, I was appointed State Service Officer by Governor Forrest Donnell, the salary at that time being \$2400.00 per year. The State Legislature meeting in Extraordinary Session in 1944, reorganized and enlarged the State Service Officer's Department, adding new duties and functions and setting the salary of the State Service Officer at \$3600.00 per year. To this date my salary has been \$2400.00 per year; therefore I would appreciate your opinion as to the present salary of the State Service Officer.

"This opinion is requested in view of the added duties and responsibilities of the State Service Officer since the Extraordinary Session of the 1944 General Assembly of Missouri. A list of the additional duties are attached herewith, also a recapitulation of the work done in the first six months of 1945.

"This Legislature increased the salary to \$3600.00 per year and appropriated the money for same. The present legislature has made its appropriation on the same basis.

"Taking into consideration the fact that the State Service Officer is under the jurisdiction of the Adjutant General of the State of Missouri, is he not an employee rather

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than an officer of the State? If this is his status, would this not also have a favorable bearing upon the increase of salary indicated above? A ruling on this point would be appreciated."

Section 15083, R. S. Mo., 1939, reads as follows:

"That upon this article becoming effective the governor of the state of Missouri, by and with the advice and consent of the senate, shall appoint a state service officer, who shall have served in the military forces of the United States of America and who has been honorably discharged therefrom. That said officer shall hold office for a term of four years and shall be subject to removal by the governor for cause and said officer shall be under the adjutant general."

Section 15084, Laws of Missouri, Extraordinary Session, 1944, page 38, reads as follows:

"The State Service Officer and all subordinates and employees of said State Service Officer shall familiarize themselves with all laws, both federal and state, relating to the rights of ex-service men and women, their legal representatives and dependents. The said State Service Officer shall aid and assist veterans of all wars, their dependents or their legal representatives. He shall promote and supervise the dissemination by all available means, information concerning the rights of veterans of all wars, their legal representatives and dependents, in the State of Missouri, under the laws of the United States and the rules and regulations of all the several United States veterans' bureaus, boards, commissions, or other United States departments or authorities which are or may be in any manner concerned with the interest and

welfare of veterans and their dependents; and shall aid and assist all veterans, their legal representatives and dependents, living in the State of Missouri, in preparing, presenting and prosecuting the claims of such veterans for compensation, pensions, insurance benefits, hospitalization, rehabilitation, and in all other matters in which they may have a claim against the United States of America or any State arising out of or connected with their service in the Military Forces of the United States of America, and in prosecuting such claims to their conclusion, when authorized and empowered to do so by such veterans, their legal representatives or dependents. The said State Service Officer, shall in his discretion, have the right to be designated as the attorney in fact by proper written powers of attorney executed by such veterans, their legal representatives or dependents, to accomplish the purposes in this act specified. He shall be authorized to accept, in carrying out the purposes of this Act, and for no other purposes, grants of services, personnel or money, from any Federal agency, or any political subdivision of the state, or from any organization or volunteer agency desiring to participate in the work of said department. It shall be the duty of the State Service Officer and his assistants, to cooperate with the several offices of the United States Employment Service, the United States Veterans' Administration, and all other federal and state offices legally concerned with and interested in the welfare of veterans and their dependents. The State Service Officer shall accept and receive for distribution, and shall distribute, any federal or state funds which are available or may hereafter become available for veterans of the Military Forces of the United States of America, and if a bond be required as a condition to securing such fund or funds, the State Service Officer shall execute such bond or bonds as may be required."

Section 15085, R. S. Mo., 1939, reads as follows:

"The said service officer shall have a seal of office and shall be authorized to administer oaths in connection with all applications and matters pertaining to claims of any nature against the United States or any state under any of their laws pertaining to the rights of veterans."

Section 15086, Laws of Missouri, Extraordinary Session, 1944, reads as follows:

"The said State Service Officer shall employ such assistants as may be necessary and within the limits of funds appropriated for such purpose. All of such assistants shall have served in the Military Forces of the United States and shall have been honorably discharged therefrom. The State Service Officer shall employ such attorneys, consultants, clerks, stenographers and employees as may be necessary to properly carry out the provisions of this act, and within the limits of the funds appropriated therefor."

Section 15086-A, Laws of Missouri, Extraordinary Session, 1944, is as follows:

"The salary of the State Service Officer shall not exceed the sum of \$3600.00 per year, and the salaries of the assistants, attorneys, consultants, clerks, stenographers and employees shall be determined and fixed by the State Service Officer, subject to the approval of the Governor."

Section 15086-C, Laws of Missouri, Extraordinary Session, 1944, is as follows:

"The State Service Officer is authorized and empowered to arrange for and accept, through such mutual arrangements as may be made, the

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volunteer service, equipment, facilities, properties, supplies, funds, and personnel of all veteran, welfare, civic and service organizations, and other organized groups, either similar or dissimilar to the preceding organizations, and individuals, in furtherance of the purposes of this act."

Section 15086-D, Laws of Missouri, Extraordinary Session, 1944, reads as follows:

"The State Service Officer is, by himself, or through his duly appointed assistants, authorized to administer oaths, and acknowledge powers of attorney in favor of the State Service Officer, and such other instruments as shall be used in connection with applications and matter pertaining to claims of any nature against the United States of America or any State under any law or laws pertaining to the rights of veterans, their legal representatives and dependents, living within the State of Missouri."

As we read your letter, the questions are,

(1). Would an increase in the salary of the State Service Officer violate any provision of the Constitution of 1945?

(2). Who has the authority to fix the salary of the State Service Officer?

(3). Does the fact that an officer acquires additional duties entitle him to additional compensation?

Section 15 of Article VII of the Constitution of 1945 provides as follows:

"The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

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From an examination of the above constitutional provision it is clear that the salary of the State Service Officer could not be constitutionally increased if the officer is a public officer of the State.

The question of whether a person is a public officer or an employee has been discussed in recent Missouri Supreme Court cases. In *State vs. Bode*, (1938) 113 S. W.(2d) 805, the Court had before it the question of whether the Director of Conservation was a public officer or an employee. The court said, l.c. 806:

"It is not possible to define the words 'public office or public officer.' The cases are determined from the particular facts, including a consideration of the intention and subject-matter of the enactment of the statute or the adoption of the constitutional provision. In other words, the duties to be performed, the method of performance, end to be attained, depository of the power granted, and the surrounding circumstances must be considered. In determining the question it is not necessary that all criteria be present in all cases. For instance, tenure, oath, bond, official designation, compensation, and dignity of position may be considered. However, they are not conclusive. It should be noted that the courts and text-writers agree that a delegation of some part of the sovereign power is an important matter to be considered. The question is considered at length in 46 C.J. p. 924. In determining that a deputy sheriff was a public officer, we stated the rule as follows:

'A public office is defined to be "the right, authority, and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public." Mechem, Pub. Off. 1. The individual who is invested with the auth-

ority, and is required to perform the duties, is a public officer.

"The courts have undertaken to give definitions in many cases; and while these have been controlled more or less by laws of the particular jurisdictions, and the powers conferred and duties enjoined thereunder still all agree substantially that if an officer receives his authority from the law, and discharges some of the functions of government, he will be a public officer." (Cases cited)

Sections 15084, 15086-C and 15086-D, supra, quoted above, designate a portion of the State sovereignty to the State Service Officer. Under these sections, he has the right to aid Veterans in obtaining their rights of all kinds under the laws of the United States and the State of Missouri, and the rules and regulations of the Veteran's Bureau. He has the right to accept grants of service, personnel, or money from any Federal Agency or political subdivision of the State. He has the right to distribute Federal and State funds available for Veterans. He has the right to administer oaths and acknowledge powers of attorney and other instruments. He has the right to arrange for and accept services, equipment, properties, etc., of civic and service organizations. The State Service Officer thus exercises the sovereign power of the State, and the Bode case, supra, considered the exercise of this function the most important element in determining whether the person is a public officer or not.

In Kirby vs. Nolte, (1942) 164 S. W.(2d) 1, the Court had before it the question of whether the Director of Personnel of the Civil Service Commission was a public officer. The Court in that case said:(l.c. 8)

"The writer was the author of the minority opinion in the Bode case, and would venture to urge the same views again here--if the facts in this case were no stronger than those in the Bode case. But they are. As said in the majority opinion in that case, 'it is not possible to define the words "public office or public officer."' But the opinion went on to say 'courts and text-writers agree that a delegation of some part of the sovereign power is an important matter to be considered.' That rather vague definition was the basis of the majority opinion. But the definition is clear and satisfying if to it the

further requirements be added, that such power must be substantial and independently exercised with some continuity and without control of a superior power other than the law."

Judge Ellison, writing the opinion in this case, was the author of a minority opinion in the Bode case. In the Nolte case, Judge Ellison stated that when there is exercised a part of the sovereignty of the State by an officer and, coupled with this, such power is independently exercised without the control of a superior power other than the law, the officer is a public officer and not an employee. The statutes relating to the State Service Officer give him the authority of exercising the sovereign power without any supervision except the remote and indirect supervision arising from the fact that the Governor of the State has the right to remove him from office for cause. Therefore, according to the latest cases on the subject, the State Service Officer is a public officer. These cases also set out other criteria for determining whether a person is an officer or an employee. These are a fixed tenure of office, an oath, a bond, an official designation and compensation. It is not necessary that all of these be present in all cases. (State vs. Bode, supra.) The State Service Officer, however, is within the purview of some of these criteria. For instance, in Section 15083, supra, he has a fixed term of office, an official designation, and his compensation is fixed on a yearly basis and is a substantial compensation.

We think, therefore, the position of State Service Officer is such as to render him a public officer. Section 13 of the new Constitution, therefore, prohibits any increase in the State Service Officer's salary during his term of office.

The second question presented is that of where the authority to fix the salary of the State Service Officer lies, (within the \$3600.00 per year limit fixed by the Legislature). We have found but one case which is of any aid in determining this question where the Legislature has failed to designate where such authority lies. In the case of Flurry vs. Jackson County, 100 So. 279, a statute of the State of Mississippi reads as follows:

"The board of supervisors are hereby authorized in their discretion, if they consider it necessary and to the general interest of the county or district, to employ a competent person to serve as

road commissioner, whose compensation shall not exceed \$5.00 per day for each day served in the actual discharge of his duties as defined by the board of supervisors of each county.* * *!"

The court held that the board of supervisors of the county did not fix the salary of the road commissioner at the correct rate because they set it at \$125.00 per month, regardless of the number of days he actually discharged his duties. However, the court did not question the right of the board to fix the salary of the commissioner. Thus, we think, the case is authority for the proposition that the appointing or hiring power has also the right to fix salaries of its appointees where the Legislature does not speak on the subject. The Governor of Missouri has the authority, under Section 15084, R. S. Mo., 1939, of appointing the State Service Officer..

Section 15086-A, above quoted, gives the Governor the approval of salaries of all employees after they have been fixed by the State Service Officer. We think this section, plus the fact that the Governor has the power of appointing the State Service Officer, indicates the intent of the Legislature that the Governor should have a supervisory position over the salaries of all personnel of the State Service Office.

The fact that the State Service Officer has additional duties does not entitle him to additional compensation unless the statute authorizes it. Coleman vs. Kansas City, 173 S. W.(2d) 572, 351 Mo. 254.

We think the statement in Section 15084, R. S. Mo., 1939, that the State Service Officer is "under the Adjutant General," does not give the Adjutant General any supervisory power over the salary of the State Service Officer. The legislative enactment relating to the office of the State Service Officer delegates no such right to the Adjutant General either as to the State Service Officer or as to his employees. The statute does, however, give supervisory power over subordinate salaries to the Governor of Missouri.

CONCLUSION

It is, therefore, the opinion of this department that the salary of the State Service Officer cannot be constitutionally

Mr. Roy Beaman

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increased during his term of office. From the above, it is the further opinion of this department that the Governor of the State of Missouri has the authority to fix the salary of the State Service Officer within the maximum of \$3600.00 per year prescribed by the Legislature.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:mw