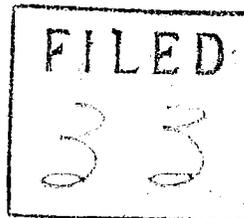


LABOR:)
WORKMEN'S COMPENSATION:) The Division of Workmen's Compensation has the power
) to appoint an assistant or deputy to the Director to
) whom the latter may delegate the authority to per-
) form the ministerial acts of his office.

April 23, 1947



5/20

Honorable Spencer H. Givens, Director
Division of Workmen's Compensation
Jefferson City, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion from this department, reading as follows:

"I am respectfully requesting your opinion on the questions raised by the problem of administration stated below:

"The Division of Workmen's Compensation is a reorganization of the old Workmen's Compensation Commission and is a part of the new Department of Labor and Industrial Relations. Reorganization was effected by Senate Bills 246 and 248 of the Sixty-Third General Assembly.

"The executive head of the Division is a director under the provisions of Section 12 (a) of Senate Bill No. 246 of the Sixty-Third General Assembly. Nowhere is there set up specific provisions for the Director to name an Assistant to act in his absence nor an executive secretary or chief clerk to whom could be assigned certain work such as the certification of documents and papers. After nine months of directing the affairs of the Division, I feel that the best and most efficient administration of the Workmen's Compensation Law calls for the assistants I have mentioned above.

"Authority, I believe, is given generally in Section 3747 above cited, beginning with line 27 and ending with line 29 on page 9

of Senate Bill 248, which citation reads: "The Division may appoint or employ such other persons as may be necessary to the proper administration of this chapter."

The question to be considered is whether an officer or a Commission can appoint or employ a deputy or an assistant without being given specific legislative authority to do so. Under the provisions of the statutes applying to your department, no such specific legislative authority is conferred upon it; however, under Section 3747, R. S. Mo. 1939, as amended by Senate Bill 248 of the Sixty-Third General Assembly your Division is given the power to appoint or employ such persons as may be necessary to the proper administration of your department's affairs.

In view of the fact that your department does not have the power to appoint or employ deputies or assistants by specific statutory authority, it is advisable to inquire whether such power of appointment was given an officer at common law. The courts of this state have only touched this question in one case and then perhaps the language of the case might be considered dictum. However, in 46 Corpus Juris 1062, Section 380, we find the following statement:

"At Common Law, however, public officers may appoint deputies for the discharge of ministerial duties, except where the law requires the duty to be performed by the principal in person." Citing *Hunter vs. Hemphill*, 6 Mo. 106

Taking the above statement as authority along with the case cited, it would appear that your Division would have authority to appoint an Assistant or Deputy Director.

It might further be added that the Division is given the power and the discretion to "appoint or employ such other persons as may be necessary to the proper administration of this chapter." If your department in its discretion considers that an assistant or deputy to the Director is necessary, for the proper administration of its affairs, then under the aforesaid provision it surely would have the power to appoint or employ such. It seems apparent that the Legislative intent was that your Division should have authority to appoint or employ such assistant, or deputy if needed. Statutes which are not completely clear should be construed so as to ascertain and give effect to the legislative intent expressed therein. See *Pugh vs. St. Louis Police Relief Ass'n.*, 179 S. W. (2d) 927, 237 Mo. App. 922; *Haynes vs. Unemployment Compensation Commission*, 183 S. W. (2d) 77, 353 Mo. 540.

Further, statutes should be construed in a manner destined to produce sensible results and should not be construed in a manner to effect an absurdity. *State vs. Irvine*, 72 S. W. (2d) 96, 335 Mo. 61. If we were to construe this statute as holding that you could not appoint or employ an assistant or deputy to the Director, then a result might be reached whereby the affairs of your Division would be at a standstill due to your possible illness or absence from the State and resultant inability to perform some ministerial act. This certainly was not the intent of the Legislature.

It further might be pointed out that practically every department in the State government has some person (although each department may have a different designation for such officer) who in the absence of the department head, can perform the ministerial acts of such office. It is not reasonable to believe, therefore, that your department should be denied this authority.

However, as pointed out above if any statute requires a ministerial act to be performed by the officer or commission in person, then the deputy or assistant may not act for his principal. Further, on all papers that require the signature of the principal the deputy must sign the principal's name and add his name as deputy or assistant.

CONCLUSION

It is, therefore, the opinion of this department that under Section 3747, R. S. Mo. 1959, as amended by Senate Bill No. 248 of the Sixty-Third General Assembly, your Division has the authority, if in its considered discretion it is necessary to insure the proper administration of your affairs, to appoint or employ an assistant or deputy to the Director to whom the latter may delegate the authority to perform the ministerial acts of his office.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JSP/vb