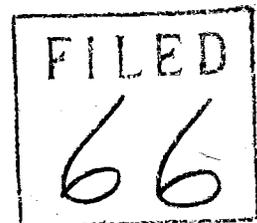


SECRETARY OF STATE: Secretary of State authorized to
fix compensation of all employees
in his department.



October 14, 1947

Honorable Edgar C. Nelson
Secretary of State
Jefferson City, Missouri

Dear Mr. Nelson:

This will acknowledge your letter requesting an opinion from this department, respecting your authority under Senate Bill No. 99 of the 64th General Assembly to fix the compensation of all employees of your department. Your letter is as follows:

"Will you please give me the opinion of your office as to the provision of Senate Bill No. 99? Does it give me authority to fix the compensation of all employees of this department, including that of Chief Clerk, Supervisor of Corporation Registration and Commissioner of Securities, Foreign Corporations Attorney, and Domestic Corporations Attorney?"

"I would like to make some changes in my salary bracket if the new law so permits. Therefore, I would appreciate your prompt advice in the matter."

Senate Bill No. 238 enacted by the 63rd General Assembly and now appearing in Laws of Missouri, 1945, page 1724, repealed all of Sections 12994 to 13009, inclusive, of Chapter 86, R.S. No. 1939, relating to the Secretary of State, and enacted in lieu of said sections so repealed sixteen new sections to be known as Sections 12994, 12995, 12996, 12997, 12998, 12999, 13000, 13001, 13002, 13003, 13004, 13005, 13006, 13007, 13008 and 13009.

The General Assembly did not disturb Chapter 86 in repealing the above enumerated sections, so that when enacted, the new sections above enumerated still fall within Chapter 86.

Senate Bill No. 99, enacted by the 64th General Assembly, repealed Section 12998 of Senate Bill No. 238, Laws of Missouri, 1945, page 1724, l.c. 1726, and enacted in lieu thereof a new section to be known as Section 12998.

The particular question you submit in your request for this opinion is whether Section 12998 of Senate Bill No. 99 gives the Secretary of State the authority to fix the compensation of all employees of his department, including that of Chief Clerk, Supervisor of Corporation Registration and Commissioner of Securities, Foreign Corporations Attorney and Domestic Corporations Attorney.

Both Senate Bills Nos. 238 and 99 give the Secretary of State the power to appoint or select or to employ such clerks and employees as may be necessary for the performance of the duties of his office.

Section 12998 of Senate Bill No. 238, Laws of Missouri, 1945, 1724, l.c. 1726, and Section 12998 of Senate Bill No. 99 differ as to the extent of the power granted the Secretary of State to fix the salaries of his appointees or employees. Section 12998 of Senate Bill No. 238 gave the Secretary of State the authority to "select, remove and fix the compensation except as otherwise provided by law of such clerks and employees as may be necessary * * *"

Senate Bill No. 99 omits the proviso, "as otherwise provided by law," from its terms, and states:

" * * * to fix the compensation of such clerks and employees as may be necessary in the performance of the duties of his office. * * *"

Regardless, however, of said conflict in Senate Bills Nos. 238 and 99 on the question of fixing salaries for the employees of the Secretary of State's office, we are confronted with the terms of Section 129, Laws of Missouri, 1945, l.c. 709, 710, a new section, enacted as a part of House Committee Substitute for House Bill No. 511, to take the place of Section 129, Laws of Missouri, 1943, l.c. 475, which was repealed by said substitute Bill No. 511, and which said Section 129, Laws of Missouri, 1945, l.c. 709, 710, definitely fixes the salaries of a number of the employees who were therein contemplated to be and who are employees in the Secretary of

State's office. Said new Section 129, Laws of Missouri, 1945, l.c. 709, 710 of the new Business and Corporation Code, is as follows:

"The Secretary of State is hereby empowered to employ a registration clerk, at an annual salary of twenty-four hundred dollars (\$2,400.00) per year, and such clerical help during the months of June, July, August and September, of each year, as may be necessary to administer this law, at the salary now paid by law to clerks in the state department, and some suitable person, who shall be an attorney at law, as supervisor of corporation registration, whose duty it shall be, under the direction of the Secretary of State, to aid in the supervision of the registration of corporations. The supervisor of corporation registration for his services as supervisor of corporation registration and as commissioner of securities shall receive a salary of forty-five hundred dollars (\$4,500.00) per annum. The salary of the Foreign Corporations Attorney shall be thirty-two hundred dollars (\$3,200.00) per year and the salary of the Domestic Corporations Attorney shall be twenty-eight hundred dollars (\$2,800.00) per year. The salary of the supervisor corporation registration and corporation attorneys and clerks shall be paid in equal monthly installments out of the fund arising from the administration of this article, by warrants drawn by the state auditor upon such fund; in addition all traveling expenses of the Secretary of State, or the supervisor of corporation registration, shall be paid out of such fund on voucher approved and audited by the state auditor, with warrants drawn on the treasurer by the state auditor. All attorneys employed pursuant to the provisions of this section, shall be duly licensed under the laws of this state."

This section provides for the administration, insofar as it relates to the Secretary of State's office, of the new

Corporation Code of this State. It relates to the duties of the Secretary of State solely for that purpose. Said section was in complete harmony with Section 12998 of Senate Bill No. 238, since that section, in granting the Secretary of State power to fix the compensation of his clerks and employees, except as otherwise provided by law, recognized the compensation provision found in Section 129 relating to certain employees of the corporation department.

However, when Section 12998 was reenacted in Senate Bill No. 99, the proviso, "as otherwise provided by law," was omitted. In the absence of said proviso, Section 12998 as it now stands is the sole provision relating to the compensation of clerks and employees of the Secretary of State's office. It is apparent that the Legislature, in omitting said proviso, intended to disregard the compensation provision found in Section 129 of the Business and Corporation Code, and vested in the Secretary of State the power and authority to fix the compensation of all clerks and employees employed in his department. Whenever the Legislature amends a statute in a certain manner, we must proceed on the theory that the Legislature intended something by the amendment. In the case of *State v. Hughes*, 173 S.W. (2d) 877, the court said at pages 880 and 881:

"What is the effect of these legislative changes? The general rule is that when part of a statute is repealed by an amendatory act, the provisions retained are regarded as a continuation of the former law, while these omitted are treated as repealed. * * * Such amendments have been accepted as controlling evidence of the legislative intent. * * * The presumption is that the Legislature intended the unamended part to remain operative and effective as before, * * * But the whole statute as amended should be construed on the theory that the law-makers intended to accomplish something by the amendment. * * *

"Consider these canons in connection with the facts here. When Sec. 4906 was first enacted it contained an express provision making it say what respondents hold it still means, namely that the licensee must be a voter and taxpayer of the county, town, city or village - wherein he seeks a license.

Those last words and another provision (barring alien licensees) were stricken out in 1935; and at the same time and in the next section of the same Act it was provided that a retail dealer in liquor by the drink (who, also, is a licensee under Sec. 4906) may have not more than three licenses, nor shall he sell at more than three places in the state. Obviously such a licensee could not be a voter and resident taxpayer of three counties, towns, cities or villages at the same time.
 * * * *

"It seems very clear to us that the words 'wherein such person seeks a license hereunder,' appearing in Sec. 27 of the original Liquor Control Act must be considered as having been repealed when that section was re-enacted without them in 1935, especially in view of the added Section 27a.
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" * * * We have the conviction that the statute does not and cannot still mean the licensee must be a voter and taxpayer of the county, town, city or village wherein he seeks the license, when that last adverbial clause was stricken from it eight years ago and another provision added which by clear implication permits him to have more than one license at the same time at different places in the state. * * *"
 (Emphasis in last sentence in first paragraph ours.)

See also Holt v. Rea, 52 S.W. (2d) 877, l.c. 878, and Smith v. Equitable Life Assur. Soc. of U. S., 107 S.W. (2d) 191, l.c. 195.

When significant words are omitted from the reenactment or amendment of a statute, it is clear that the Legislature intended to exclude the object there accomplished by the abandoned words. In the Missouri case of United States v. Bashaw, 50 Fed. 749, the United States Circuit Court of Appeals for the Eighth Circuit said at pages 753 and 754:

" * * * It is a fundamental rule of construction that, if possible, force must be given to all the words used therein, and also that, when a previous statute is amended by an alteration of the terms used therein, it is to be presumed that it was the intent to alter the meaning of the previous act in that particular. If it was the intent of congress, in passing the amendatory act of 1873, to leave the question of compensation to the attorney unchanged, why was it that congress struck out the words 'for expenses incurred and services rendered in prosecutions for such fines and personal penalties,' etc., and inserted the words found in section 838? The natural presumption is that the phraseology of the statute was changed in order to change its meaning. The very fact that the prior act is amended demonstrates the intent to change the pre-existing law, and the presumption must be that it was intended to change the statute in all the particulars touching which we find a material change in the language of the act. * * * In our judgment, the change in the language used in the amendatory act of 1873 must be given its legitimate force, and the fair and natural meaning of the words used in the section ought not to be narrowed in the attempt to make its meaning conform in this particular to the previous statute."

(Reversed in 152 U. S., 436, 38 L. Ed. 505, but on other grounds.)

See also *Wills v. Russell*, 100 U. S. 621, 25 L. Ed. 607, and *San Marcos Baptist Academy v. Burgess*, 292 S.W. 626.

The Secretary of State therefore is authorized to fix the compensation of the Chief Clerk, Supervisor of Corporation Registration and Commissioner of Securities, Foreign Corporations Attorney, and Domestic Corporations Attorney, as well as that of all other clerks and employees in his department.

Conclusion.

In view of the foregoing, it is the opinion of this department that the Secretary of State is, under the provisions of Section 12998 of Senate Bill No. 99 of the 64th General Assembly, authorized to fix the compensation of all employees in his department, including that of Chief Clerk, Supervisor of Corporation Registration and Commissioner of Securities, Foreign Corporations Attorney, and Domestic Corporations Attorney.

Respectfully submitted,

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APPROVED:

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