

PUBLIC HEALTH AND WELFARE: Deputy administrator of Food and Drug is subject to the Merit System Act.

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Mr. Warren E. Lofton, Director
Bureau of Food and Drug Inspection
Division of Health of Missouri
Jefferson City, Missouri

Dear Mr. Lofton:

This is in reply to your request of recent date for an opinion on the question of whether the deputy in charge of Food and Drug administration comes within the terms of the Merit System Act, House Bill No. 162.

Section 22 of Senate Bill No. 349, Laws of Missouri, 1945, page 951, provides:

" * * * Said director shall have power to appoint a deputy who, under the director, shall be chiefly responsible for administration of laws pertaining to food and drugs, * * *"

Section 7 of Senate Bill No. 349, Laws of Missouri, 1945, page 947, provides, in part:

"Below the rank of director and assistant director, all employees shall be selected on the basis of merit as provided by law."

Section 2(b) of House Bill No. 162, Laws of Missouri, 1945, page 1158, provides:

"The provisions of this act shall apply to all offices, positions and employees of the State Department of Public Health and Welfare, * * * except such offices, positions and employees within the above named agencies as are herein specifically exempted."

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Following Section 2(b) are several positions which are exempted from the operation of the terms of the Merit System Act, but in none of them is there provision made for an exemption of the Deputy Food and Drug Administrator. Therefore, under the terms of Section 2(b) of House Bill No. 162 and Section 7 of Senate Bill No. 349, the Deputy Administrator of Food and Drugs would be subject to the Merit System Act unless he would be exempted as an Assistant Director of the Division of Health. However, we do not believe that he is an Assistant Director. It has been generally held that an assistant does not mean a deputy (Ellison v. Stevenson, 22 Ky. (6 T.B.Mon.) 271, 276, 279).

Conclusion.

It is the opinion of this department that the Deputy Administrator of Food and Drugs in the Division of Health of the Department of Public Health and Welfare is subject to the terms of the Merit System Act as embodied in House Bill No. 162, Laws of Missouri, 1945.

Respectfully submitted,

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APPROVED:

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JRB:ml