

RELIGION: The Division of Mental Health may employ
MERIT SYSTEM: persons who have education or experience in
MENTAL HEALTH: Divinity and Theology regardless of whether
or not they are ordained ministers to act as
pastoral counselors under the supervision of and as required by
licensed physicians and so long as such persons do not espouse a
religion or perform sacerdotal functions in their employment there
is no violation of the provisions of the Missouri Constitution
which prohibit support of any priest, preacher, minister or teacher
as such. Such counselors as employees of the Division of Mental
Health and under the Department of Public Health and Welfare are
required to be under the classified merit system.

OPINION NO. 213

May 7, 1970

George A. Ulett, M.D., Director
Division of Mental Health
P.O. Box 687
Jefferson City, Missouri 65101



Dear Dr. Ulett:

This opinion is in response to your question concerning whether persons having education in the areas of Divinity or Theology and who may or may not be ordained ministers of various faiths may be employed by the Division of Mental Health as pastoral counselors in situations where a psychiatrist determines that pastoral counseling and assistance is beneficial and a necessary part of the patient's treatment process. You also inquire whether such persons would be under the classified merit system.

We held in our Opinion No. 356, dated September 30, 1969, to Waits, that the Constitution of Missouri prohibits public funds from being used to employ a full-time chaplain for a county jail. We are enclosing a copy of that opinion which sets out in detail the constitutional provisions upon which that ruling was based. In that respect, we relied principally upon the provisions of Section 7, Article I, of the Constitution which provides:

"That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship." (Emphasis added)

George A. Ulett, M.D.

It is clear that the above provision does not bar a priest, preacher, minister or teacher of religion from public service or from receiving public funds when he is not employed in the capacity of a minister and when he is not being paid to preach, distribute sacraments, or to perform other sacerdotal or sectarian functions.

We recognized in our Opinion No. 164, dated June 2, 1966, to Wheeler, that membership in the ordained clergy or in a religious order does not prevent a qualified person from being lawfully employed as a teacher of secular subjects in a public school. We also enclose a copy of that opinion.

Similarly, in our Opinion No. 354, dated December 19, 1968, to Morton, copy enclosed, we held that an agency of the state government may be authorized by the legislature to contract and cooperate with private medical schools for the purpose of training Missourians in the medical profession and that the mere fact that a medical school may be affiliated with or a part of a sectarian institution does not in and of itself preclude its participation in such a contract.

Further, in our Opinion No. 157, dated June 25, 1963, to Traywick, we held that it is permissible for regular faculty members of a state college to teach academic courses about religion as a part of the curriculum of a state supported college. And, in our Opinion No. 313, dated November 21, 1968, to Curtis, we held that a state college or university may establish courses, a division or department of religion for the purpose of teaching about religion as distinguished from the teaching of religion, and that such courses must maintain strict religious neutrality as defined by the courts. We have also enclosed copies of these opinions.

We are also of the opinion that members of religious orders are not precluded from wearing religious garb while teaching or in other similar occupations in the absence of a statute or regulation to the contrary. Moore v. Board of Education, 212 N.E.2d 833, 4 Ohio Misc. 257 (1965). And, we know of no such prohibition with respect to the wearing of religious garb under these circumstances in this state.

The fact that a person has received some theological education or, as we have stated, even though he may in fact be ordained does not preclude him from occupying a position that does not promote his religious faith or views. Clearly such employment would be prohibited if such a person did, as a part of his job, espouse or proselyte a religion or religious activities.

It is our understanding that the mental health area has peculiar demands not only upon the qualified physicians who are responsible for the treatment of the patients in hospitals but also

George A. Ulett, M.D.

upon all the supporting personnel who are concerned with resolving conflicts and symptoms that evolve around the needs of the patients. Not the least of these are often the spiritual concerns of the patients and the no doubt large number of mentally ill persons who experience religious aberrations which must be dealt with in treatment.

We understand that pastoral counselling is often an important aspect of treating mentally disturbed people, and that such counselling does not entail preaching, performing sacerdotal functions or teaching religion. Therefore, a person employed as a pastoral counselor is not employed as a priest, preacher, minister or teacher of religion as such.

In answer to the second part of your question, we believe that such positions must be classified merit system positions under the provisions of Paragraph 1 of Section 191.070, RSMo 1959, which states:

"All employees of the department of public health and welfare, except the department director, the division directors and one secretary for each director, chaplains, patients or inmates of state charitable institutions who may also be employees in such institutions, and persons employed in an internship capacity as a part of their formal training leading to an academic degree, shall be selected in accordance with the state merit system law, notwithstanding that such office, position, or employment may be specifically exempted under the state merit system law. Such employees shall be persons of good character and integrity and residents of this state for one year, except that residence in this state shall not be necessary in cases of appointment of physicians, nurses, technicians, dietitians, and other professionally trained personnel."

In view of our holding in Opinion No. 356, 1969, cited above, prohibiting the employment of a full-time chaplain in the Jackson County Jail, it follows that "chaplains" cannot, as such, be employed by the state.

As we have stated, the position of pastoral counselor in offering pastoral type services not espousing any religion is not considered the employment of a "chaplain" under Section 191.070.

George A. Ulett, M.D.

Such a position therefore necessarily comes within the merit system and such employees must be classified under the merit system provisions.

CONCLUSION

It is, therefore, the opinion of this office that the Division of Mental Health may employ persons who have education or experience in Divinity and Theology, regardless of whether or not they are ordained ministers, to act as pastoral counselors under the supervision of and as required by licensed physicians and so long as such persons do not espouse a religion or perform sacerdotal functions in their employment there is no violation of the provisions of the Missouri Constitution which prohibit support of any priest, preacher, minister or teacher as such. Such counselors as employees of the Division of Mental Health and under the Department of Public Health and Welfare are required to be under the classified merit system.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosures:

- Opinion No. 164, 6/2/66, Wheeler
- Opinion No. 354, 12/19/68, Morton
- Opinion No. 157, 6/25/63, Traywick
- Opinion No. 313, 11/21/68, Curtis
- Opinion No. 356, 9/30/69, Waits