

May 12, 1975

OPINION LETTER NO. 28
Answer by Letter - Verhagen

Mr. Edward A. Godar
Director, Personnel Division
Office of Administration
117 East Dunklin Street
Jefferson City, Missouri 65101



Dear Mr. Godar:

This letter is in answer to your request pertaining to the suspension, demotion or dismissal of state civil service employees. For the purposes of this opinion, your question has been summarized into the following query:

"Is the arrest and charge of a felony or misdemeanor, of which the employee has yet to be convicted, sufficient for suspension or dismissal under Rule 13.2 of the Rules and Regulations of the Personnel Advisory Board, where the employee's culpable conduct is not directly related to job performance?"

This opinion will deal only with that conduct of the employee which is not job-related.

Section 36.370, House Bill No. 8, First Extraordinary Session, 77th General Assembly, states in part that:

"An appointing authority may, for disciplinary purposes, suspend without pay any employee in his division for such length of time as he considers appropriate, not exceeding twenty calendar days in any twelve-month period. . . ."

Mr. Edward A. Godar

Rule 13.2 of the Missouri State Personnel Advisory Board provides, inter alia, that a civil service employee may be discharged or suspended if:

"(g) [He] has been convicted of a felony,
or of a misdemeanor involving moral turpitude;
. . ." (Emphasis supplied).

Without reaching the question of what constitutes a crime involving moral turpitude, it is our opinion that Section (g), requires that an employee be convicted of a crime before he may be disciplined under that section. We feel such a conclusion follows from the plain language of the section itself, and from the judicial decisions interpreting civil service law.

When specific grounds for removal or suspension are established, they are to be strictly construed. State ex rel. Hardie v. Coleman, 155 So. 129, 115 Fla. 119 (1934). When removal or suspension is based on the commission of a crime, it must be shown that the employee was actually convicted of the crime before disciplinary action is warranted. State v. Henderson, 146 So. 456, 166 Miss. 530 (1933); Smith v. Commonwealth, 113 S.E. 707, 134 Va. 589 (1922).

In addition, it is submitted that Section (g) of Rule 13.2 is, on its face, devoid of ambiguity in its mandate that an employee be convicted of a crime before he is subject to disciplinary proceedings by the Personnel Advisory Board.

Therefore, it is our opinion that the mere arrest and imposition of criminal charges against a state civil service employee is not, in itself, grounds for disciplinary action being taken against him.

Very truly yours,

JOHN C. DANFORTH
Attorney General