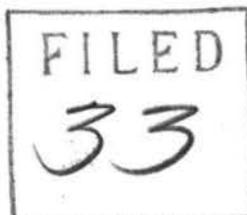


LEGISLATURE
LEGISLATIVE RESEARCH COMMITTEE

) Legislative Research Committee of
) General Assembly cannot delegate
to Executive Committee or other sub-
committees or director power to
employ or discharge staff members
or other employees.

September 20, 1949

9/26/49



Senator Floyd R. Gibson
Missouri Senate
Jefferson City, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this Department, and reading as follows:

"A motion was adopted at the last meeting of the Legislative Research Committee relative to the powers of its Executive Committee to appoint, employ, or discharge employees of the Committee. The question was raised whether or not the Committee, as a whole, could delegate such powers to its duly appointed Executive Committee under the law setting up the Legislative Research Committee. Request was made in said motion to solicit an opinion from the Attorney General on this matter.

"Herewith is set out in full an excerpt from the minutes of the Legislative Research Committee on this question:

"After considerable discussion relating to the powers and duties of the Executive Committee, Mr. Frisby moved that a committee of four be appointed to draft a rule with respect to the powers of the Executive Committee to appoint, employ or discharge employees of the Committee and that they be authorized to request an opinion of the attorney-general to interpret the statute setting up the Committee on Legislative Research as to whether the Committee has power to delegate authority to the Executive Committee or other sub-committees or to the director to employ and discharge staff members or other employees. Motion seconded by Senator Frisby. Carried."

"As I have been appointed Chairman of a committee to make recommendations on the matter, I would appreciate receiving your opinion by September 23, if possible, so that I may have a meeting of this committee before the first of the month."

Section 14737, Laws of Missouri, 1945, page 1136, provides as follows:

"There is hereby established a permanent joint committee of the general assembly, to be known as the committee on legislative research, to be comprised of ten members of the senate and ten members of the house of representatives whose offices shall be located in the Capitol Building, Jefferson City, Missouri. The senate members of the committee shall be appointed by the president pro tem of the senate and the house members shall be appointed by the speaker of the house, and their appointments shall continue during their terms of office as members of the general assembly, or until a successor shall be duly appointed to fill the place of any committee member whose term of office shall have expired. No major party shall be represented by more than six members from the house, nor more than six from the senate on such committee. The general assembly, by a majority vote of the elected members, may discharge any or all of the members of the committee at any time and select their successors."

Section 14738, Laws of Missouri, 1945, page 1126, provides as follows:

"The Committee on Legislative Research shall meet within ten days after its creation and organize by selecting a chairman and a vice chairman, one of whom shall be a member of the Senate and one of whom shall be a member of the House of Representatives. The Research Director shall serve as secretary to the Committee on Legislative Research. He shall keep the records of the Committee and be subject to the jurisdiction and order of the Committee during the vacation or recess of

the General Assembly. The Committee on Legislative Research shall have the authority to employ two custodians, one for the Senate chamber and one for the House chamber in the state capitol building. The regular meeting place of the Committee shall be in Jefferson City, Missouri, and after its inception and organization it shall regularly meet at least once every three months. A majority of the members of the Committee shall constitute a quorum and its membership shall serve without compensation, but shall be entitled to mileage and necessary expenses incurred while attending any meetings of the Committee within the state. Special meetings of the Committee may be called at such time and place within the state as the chairman thereof may so designate. Provided, no member shall receive for such expenses more than \$250.00 for any period of two calendar years."

(Under scoring ours.)

Section 14746, Laws of Missouri, 1943, page 632, provides as follows:

"The Committee is authorized to regularly employ for a period not exceeding two years, from date of appointment, and fix the compensation of, a research officer, who shall be competent to assume administration of the necessary activities of the Committee under the direction of the Committee. The Committee shall also be authorized to employ such other clerical and research assistance as it may deem necessary within the limits of the appropriation made out of the general revenue of the state for the purpose of carrying out the provisions of this article. Said Committee shall also fix the compensation of the custodians of the House and the Senate and shall make and enforce reasonable rules and regulations for the care of the Senate and House chambers, including the bill rooms, and filing rooms, and the furniture, files, and supplies therein. Said

Committee is authorized to provide necessary legal reports and other publications to be kept in the library of the Committee; and to pay for same out of any appropriations made to such Committee. The Secretary of State is hereby authorized to furnish the librarian, without charge, such number of Missouri statutes and acts as may be desired by the Committee to enable it to exchange such acts for those of other states."

(Underscoring ours.)

The rule in Missouri with regard to delegation of authority is found in the case of State ex rel. v. Reber, 226 Mo. 229, where the Supreme Court in Bang said at l.c. 234 and l.c. 237:

"As has been said already the duties of the president of the board of public improvements are of two kinds, the one is such as requires the exercise of discretion and judgment, involving often scientific and technical knowledge, the other requires the performance of mere ministerial or clerical work. The duties first mentioned cannot be delegated, those of the ministerial kind may be delegated with proper care.

* * * * *

"* * * An officer to whom a discretion is entrusted by law cannot delegate to another the exercise of that discretion, * * *"

In the case of Stoughton & al. v. Baker, 4 Mass. 522, 3 Am. Dec. 236, the Supreme Judicial Court of Massachusetts had before it a case in which a committee of three was appointed by the Legislature of Massachusetts to inspect dams on a specified river, order alterations or cause new fishways to be built as in their opinion or a major part of them should be sufficient. Such committee appointed one Loud as a sub-committee. The court said, l.c. 530 of the Mass. Rep.:

"The authority given to the committee is by the terms of the resolve to be exercised by them, or the major part of them. The exercise of this authority is personal, and cannot be delegated. If it could be delegated, it might be delegated to any other man, as well as to Mr. Loud, one of the committee. If the committee or a major part of them had exercised the powers given them, it might have been thought by them reasonable to give the defendants time until the next spring to make the alterations; or they might have employed other persons than the plaintiffs to make them. However this might have been, it is extremely clear that the powers given to the committee must be exercised by all, or by the greater part, and that they could not be delegated to Mr. Loud, or to any other person."

From the quoted statutes establishing the Legislative Research Committee of the Missouri General Assembly, we believe it to be clear that the committee must act in the employment or discharge of employees of such committee. We believe this to be evident from the provision in Section 14738 that a majority of the members of the committee shall constitute a quorum, and the provisions in Section 14746 that, "the committee" is authorized to employ such assistants as it may deem necessary. We can find no authority whatsoever in the statutes creating the Legislative Research Committee for such committee to delegate its authority to an executive committee or the director of the Legislative Research Committee.

CONCLUSION.

It is the opinion of this Department that the Legislative Research Committee of the General Assembly of Missouri has no authority to delegate to the executive committee or other sub-committees or the director of the Legislative Research Committee the power to employ and discharge staff members or other employees.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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