

March 13, 1967



Mr. Herman Julien, Director
Division of Employment Security
Box 59
Jefferson City, Missouri

Dear Mr. Julian:

Recently you submitted an opinion request to this office as follows:

"As you know, the Division of Employment Security is staffed with personnel selected in accordance with the State Merit System Law (Chapter 36, RSMo 1959). The question has arisen whether the salaries paid to individuals working for the Division under so-called emergency appointments are properly charged as an administrative cost of the agency.

"I would, therefore, appreciate your opinion on the following questions:

"What is an emergency within the meaning of the term as used in Section 36.270, RSMo 1959?

"Is the Director of the Division of Employment Security, as the 'appointing authority' as defined in the State Merit System Law, vested with discretion to determine whether an emergency exists so as to justify an 'emergency appointment' under the terms of Section 36.270, RSMo 1959?

Mr. Herman Julien, Director

"Are not emergency appointments subject to at least tacit approval by the head of the Personnel Division of the Department of Business and Administration in view of the provisions of Section 36.330, RSMo 1959?"

You have asked for my opinion as to the authority you have for the making of emergency appointments under Section 36.270, RSMo.

Section 36.270, RSMo 1959, reads as follows:

"Emergency appointments. -- When an emergency makes it necessary to fill a position subject hereto immediately in order to prevent stoppage of public business, or loss, hazard, or serious inconvenience to the public, and it is impossible to fill such a position under any other provision of this chapter, an appointing authority or a properly authorized subordinate employee may appoint any qualified person to such a position without prior approval of the director. Any such person shall be employed only during such an emergency, and any such appointment shall expire automatically thirty working days from the date of appointment. If the emergency continues, the appointment may be extended to sixty days, but no individual may be given more than one such appointment in any twelve-month period. A vacancy of which the appointing authority has had reasonable prior notice, or an employment condition of which he had, or might with due diligence have had, previous knowledge, shall not be considered an emergency under this section. The appointing authority shall report each emergency appointment to the director as soon as possible after date of such appointment and the report shall contain the name of the person appointed, the date of appointment, and the reasons which made the appointment necessary."

Mr. Herman Julien, Director

Section 9.4(c) of the Rules and Regulations of the Personnel Advisory Board, promulgated pursuant to Section 36.070, RSMo 1959, restates such authority in identical language in Section 36.020, RSMo.

As used in Chapter 36, RSMo, the term "appointing authority" is an officer agency under the Merit System Law having power to make appointments and the word Director refers to the Director of the State Merit System Law.

Section 288.220, RSMo Cum. Supp., provides in part that the Division of Employment Security shall be under the control, management and supervision of a Director with authority subject to the provisions of the State Merit System Law (and Chapter 36, RSMo) to employ and prescribe the duties of such employees as may be necessary.

As we view it, the quoted statutory provision vests discretion in the appointing authority (the Director of the Division of Employment Security, in this case) or a properly authorized subordinate employee to make an appointment when an emergency exists. The term "emergency" is not defined, and it would, therefore, appear that it is used in its plain or ordinary and usual sense, which is: "an unforeseen combination of circumstances which calls for immediate action". (Webster's International Dictionary, Second Edition).

While, as noted the State Merit System Law (Chapter 36, RSMo 1959) does not define the term, it does prescribe a limitation upon any determination by the appointing authority that an emergency exists, by saying, in the section quoted:

"* * * A vacancy of which the appointing authority has had reasonable prior notice, or an employment condition of which he had, or might with due diligence have had, previous knowledge, shall not be considered an emergency under this section. * * *"

Subject to this express limitation, it would seem that you, as appointing authority, have the authority to determine when an emergency exists, justifying an appointment under the terms of Section 36.270.

It is unnecessary to determine whether the emergency appointments must be approved by the Personnel Director because if we assume that such approval is necessary the certification by the

Mr. Herman Julien, Director

Personnel Director of the agency payroll, as provided for in Section 36.330, RSMo, which includes such emergency employees, constitutes approval by the Personnel Director of such appointments made by the appointing authority.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

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