

LAW ENFORCEMENT ASSISTANCE COUNCIL:  
EXECUTIVE ORDER:  
COMPENSATION:  
CONFLICT OF INTEREST:

Such Council may properly determine the compensation and allowances of the Chairman.

The Governor of Missouri properly established the Missouri Law Enforcement Assistance Council by Executive Order. Such Council may properly determine the compensation and allowances of the Chairman.

January 11, 1972

OPINION NO. 50



Honorable William L. Culver, Executive Director  
Missouri Law Enforcement Assistance Council  
P. O. Box 1041  
Jefferson City, Missouri 65101

Dear Mr. Culver:

This opinion is in response to your request which is stated as follows:

"1. The Missouri Law Enforcement Assistance Council was established by Executive Order of the Governor within the Department of Community Affairs, pursuant to the Omnibus Crime Control and Safe Streets Act. Appropriations have been made by the General Assembly for the operation of MOLEAC. Is the establishment of the Council by Executive Order sufficient to create it as a legally constituted body without the necessity of statutory authorization or is statutory authorization needed?"

"2. If the Chairman of the Missouri Law Enforcement Council, who is also a member is compensated as Chairman for duties which are essentially full-time, is there any conflict of interest which violates Section 105.490 RSMo 1969 or any other Missouri law?"

With respect to the background of the Missouri Law Enforcement Assistance Council you furnished us the following information:

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"On June 19, 1968, Congress passed Public Law 90-351. The Omnibus Crime Control and Safe Streets Act of 1968. Congress Declared its policy to 'assist State and local governments in strengthening and improving law enforcement at every level by national assistance. It was the purpose of the act to 1) encourage states ... to prepare and adopt comprehensive plans ... 2) authorize grants to states ... to improve and strengthen law enforcement and 3) encourage research and development directed toward the improvement of law enforcement.' The Act further provides that the governor of the state shall create a state planning agency which shall:

- 1) develop a comprehensive statewide plan for the improvement of law enforcement throughout the state;
- 2) define, develop and correlate programs and projects for the state and the units of local government; and,
- 3) establish priorities for the improvement in law enforcement throughout the state.

"On August 19, 1968, pursuant to the federal statute, Governor Hearnes issued an executive order establishing within the Department of Community Affairs, an 'agency for the purpose of crime control planning and implementation of such plans. The Executive Order also established a commission to be appointed by the Governor, consisting of persons "professionally concerned with law enforcement and the public at large" to be "charged with the responsibility for formulating policy and plans of action for the implementation of the OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968."' On January 17, 1969, the Governor issued a second Executive Order designating the Missouri Law Enforcement Assistance Council as the state planning agency to administer and implement the provisions of the Juvenile Delinquency Prevention and Control Act of 1968."

We also note that the national publication entitled "Report on the Office of the Attorney General" dated February 1971 at l.c. 495 et seq. reported a study on such state planning and their operation throughout the various states of the United States. The report notes in particular, that

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the Omnibus Act relied heavily upon state government as planners, administrators, coordinators and innovaters and that the states are assigned the major share of the administrator's responsibility for the program. In particular the report noted, l.c. 506.:

"The law required that the S.P.A. be designated by the Governor and subject to his jurisdiction. It could be either a specially-established unit of state government, or an existing body. Organization and structure were matters of state discretion, but the state planning agency must: (1) be a definable agency in the executive branch of State government charged with and empowered to carry out the responsibilities imposed by the Act; (2) have a supervisory board (i.e., a board of directors, commission, committee, council, etc.) which has responsibility for reviewing, approving and maintaining general oversight of the State plan and its implementation, of action priorities, of sub grants or allocations to localities, and of other planning agency functions; (3) have an administrator and staff who devote full time to the agency's work.

"Most states created, either by executive order, statute, or a combination of the two, an independent agency attached to the Governor's office or to some other executive department...."

In addition with respect to the composition of the boards the report states:

"The Act specified that a state planning agency 'shall be representative of law enforcement agencies of the State and of the units of general local government within the State.' L.E.A.A. Guidelines said that 'the composition of such boards may vary from State to State; however, balanced representation is required'..."

While there is little doubt that the Governor under normal circumstances is limited with respect to his power to appoint officers and assign duties to such officers, 38 Am.Jur.2d Governor § 5, we have no Missouri or other case law to guide us in the premises possibly for the reason that the courts, including the Missouri Supreme Court, State ex rel Robb v. Stone 25 S.W. 376 (1894), have always been reluctant to interfere with the execution of the executive function. This is true because the Governor

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in acting in his political capacity in carrying on the appropriate functions of the State executes a duty for which he is in nowise amenable to the judiciary. State ex rel. Bartley v. Governor 39 Mo. 390 (1867). However, in short answer to your question with respect to the Governor's powers to appoint such counsel for such purposes we call your attention to Opinion No. 469 dated March 29, 1965 to Sargent Shriver, copy enclosed, in which we held that the Governor had the authority to designate his Administrative Assistant for Urban Affairs to be the appropriate state agency to carry out the state's program of technical assistance under the Economic Opportunity Act of 1964 and that such agency was properly created and termed Missouri Office of Economic Opportunity by the Governor, which was a fictitious name used to describe the program within the Office of the Governor.

By comparison in this instance the Governor has made his designation and appointment of council members in implementation of such federal acts within the Department of Community Affairs which itself is vested with extremely broad powers with respect to Federal cooperation and planning under Chapter 251 RSMo.

As we have further noted above from our quotations from the publication entitled "Report on The Office of the Attorney General" it has been common practice within many states to create such councils by executive order or alternatively by statute or by a combination of the two. Since the Governor has acted in this respect consistent with the previous policy of this office as indicated by our prior opinion, and in furtherance of the planning requirements of the federal statutes it is our view, in answer to your first question, that the Governor properly established the Council by Executive Order and created it as a legally constituted body.

Your second question asks whether there is any conflict of interest if the Chairman of the Council is compensated for his performance as Chairman.

In that respect the facts furnished us in particular with respect to Mr. Isaac Gurman show that Mr. Gurman was named the Chairman of the Council by the Governor shortly after the Executive Order was issued which designated the Missouri Law Enforcement Assistance Council as the State Planning Agency to administer and implement the provisions of the Juvenile Delinquency

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Prevention and Control Act of 1968. The minutes of the Council, all members of which were appointed by the Governor, indicate that Mr. Gurman's initial salary and allowances and his further increases in salary were determined by the Council.

In this respect our attention has been called to Attorney General's Opinion No. 465 dated December 29, 1966 to Lee E. Norbury, copy enclosed, and also in particular to the decisions of the Missouri Supreme Court in Githens v. Butler County 165 S.W.2d 650 (1942) and Nodaway County v. Kidder 129 S.W.2d 857 (1939). The holdings in these respective opinions, concisely stated, is that a member of an official board cannot contract with the body of which he is a member since such contract would be against public policy and that a member of a board cannot be appointed to a position by the board of which he is a member.

The facts before us disclose that the Governor himself made the appointment of Mr. Gurman to the Council and designated him Chairman. While, we are advised, his status in the law enforcement plan is designated as "Consultant", in this instance, as in others, it is not the title of the subject which governs but rather the substance. That is, even in a contested case parol evidence may be admissible to clarify the nature and extent of a commission. State v. Adm'r of Fulkerson 10Mo. 423 (1847). Therefore the question is not whether a council member can, in the sense of the above Missouri cases, contract with the Council but is simply whether the Council under these circumstances has the authority to fix the compensation and allowances of the Council Chairman.

Without attempting to pass upon any aspects of the law enforcement plan or the Law Enforcement Assistance Council which are not before us it appears clear that this council has the power and authority to set the compensation of the Chairman and that the exercise of such power is not against public policy. The council has power to set the compensation of officers and employees of the council and this includes the power to set the compensation of the chairman.

We view this action as comparable to the action of the members of a city council setting their salaries by ordinance passed by the council as authorized by a statute or city charter.

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CONCLUSION

It is the conclusion of this office that the Governor of Missouri properly established the Missouri Law Enforcement Assistance Council by Executive Order. Such Council may properly determine the compensation and allowances of the Chairman.

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

Very truly yours,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name and title.

JOHN C. DANFORTH  
Attorney General