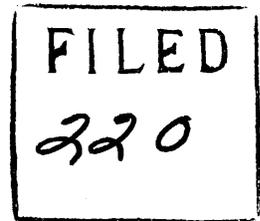


MERIT SYSTEM: In addition to the Director of
STATE EMPLOYEES: the Department of Social Services
DEPARTMENT OF SOCIAL SERVICES: and his secretary, and the divi-
sion directors and their secre-
taries, and three additional positions in each division, all posi-
tions included in the exemptions listed in Section 36.030.1, RSMo,
are excluded from the requirements of Chapter 36, RSMo.

OPINION NO. 220

June 11, 1974

Honorable Christopher S. Bond
Governor of Missouri
Executive Offices
State Capitol Building
Jefferson City, Missouri 65101



Dear Governor Bond:

This is in response to your question as stated:

"Does the provision of Section 13.1 of Senate Bill No. 1, which allows 'no more than three additional positions in each division' of the Department of Social Services to be nonmerit positions, include the positions exempted by Section 36.030 RSMo?"

Section 13.1 of C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly (hereinafter referred to as Senate Bill No. 1), states in part:

". . . All employees of the department of social services shall be covered by the provisions of chapter 36, RSMo, except the director of the department and his secretary, all division directors and their secretaries, and no more than three additional positions in each division which may be designated by the division director." (Emphasis added)

Section 36.030.1, RSMo, as amended by House Bill No. 8 (H.C.S. H.B. No. 8), First Extraordinary Session, 77th General Assembly, effective May 2, 1974, states:

Honorable Christopher S. Bond

"A system of personnel administration based on merit principles and designed to secure efficient administration is established for all offices, positions and employees of the division of welfare, the division of health, the division of mental health, the state department of corrections, the personnel division and other divisions and units of the office of administration, the division of employment security of the department of labor and industrial relations, the division of industrial inspection, the tourism commission, the board of probation and parole, the board of training schools, and such other agencies as may be required to maintain personnel standards on a merit basis by federal law or regulations for grant-in-aid programs, except that the following offices and positions of these agencies are not subject to this law and may be filled without regard to its provisions:

(1) Other provisions of the law to the contrary notwithstanding, members of boards and commissions and heads of divisions of service having specified terms of office or required by law to be appointed by the governor or by the director of a department of the executive branch of government, except the personnel director;

(2) One secretary for each board or commission the members of which are appointed by the governor or by a director of a department of the executive branch of government, except the personnel advisory board;

(3) One secretary for each director, division head and each member of boards and commissions the members of which devote their full time to the business of the board or commission and are appointed by the governor or by a director of a department of the executive branch of government, except the personnel director;

Honorable Christopher S. Bond

(4) Chaplains and attorneys regularly employed or appointed in any department or division subject to this law, persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination, and persons whose employment is such that selection by competitive examination is not practicable under all the circumstances;

(5) Physicians employed in agencies or institutions other than in those agencies and institutions within the department of public health and welfare;

(6) Persons whose employment is incidental to the fulfillment of a formal contract entered into in behalf of the state by competent authority when the persons are in fact employees, agents or representatives of the contractor;

(7) Patients or inmates in state charitable, penal and correctional institutions who may also be employees in the institutions;

(8) Persons employed in an internship capacity in a state department or institution as a part of their formal training leading to an academic degree; except that by appropriate resolution of the governing authorities of any department or institution, the personnel division may be called upon to assist in selecting persons to be appointed to internship positions;

(9) Except as otherwise provided by law, a deputy or deputies to the exempt head of each division of service as warranted by the size and complexity of the organization and as approved by the personnel advisory board, and one secretary for each such deputy so exempted; provided, however, that merit status will be retained by present incumbents of those positions which have previously been subject to this law;

Honorable Christopher S. Bond

(10) Notwithstanding the provisions of section 26.300, RSMo, the director of the division of design and construction, the director of the division of contracting and procurement, the director of the division of budget, and the director of the division of accounting in the office of administration."

Section 36.030.1, RSMo, quoted above, provides for several classifications of positions that are generally exempt from the provisions of Chapter 36. The legislature presumably intended that these enumerated positions would be better staffed without application of the Chapter 36 provisions. As such, the exempt positions designated in Section 36.030.1 are to be considered also exempt from the merit system law as applied to the Department of Social Services.

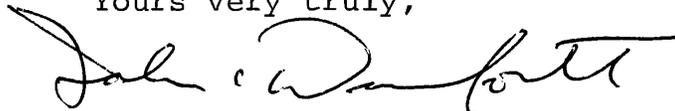
Therefore, it is our view that the exceptions to the provisions of Chapter 36, RSMo, as authorized by Section 13.1 of Senate Bill No. 1 include: (1) the director of the department and his secretary, (2) the division directors and their secretaries, (3) three additional positions in each division of the department as designated by the respective division director, and (4) all exempted positions delineated in Section 36.030.1.

CONCLUSION

It is the opinion of this office that in addition to the Director of the Department of Social Services and his secretary, and the division directors and their secretaries, and three additional positions in each division, all positions included in the exemptions listed in Section 36.030.1, RSMo, are excluded from the requirements of Chapter 36, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Andrew Rothschild.

Yours very truly,



JOHN C. DANFORTH
Attorney General