

COMPENSATION:
REORGANIZATION ACT:
MISSOURI HIGHWAY RECIPROCITY COMMISSION:

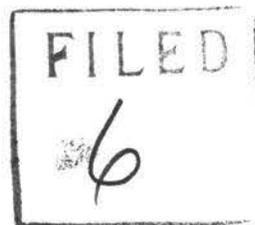
The Omnibus State Reor-
ganization Act of 1974
authorizes the Director
of Revenue to approve

all salary increases for employees of the Missouri Highway Reciprocity
Commission.

OPINION NO. 6

February 6, 1976

Mr. James R. Spradling, Director
Department of Revenue
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Mr. Spradling:

This opinion is in response to your question asking as follows:

"Does the Director of Revenue have the authority to approve all salary increases for employees of the Highway Reciprocity Commission?"

You also state:

"Section 301.273 RSMo 1969, authorizes the Highway Reciprocity Commission to fix the compensation of the secretary for the commission and other employees. However, paragraph 5, Section 12, Omnibus State Reorganization Act transfers all the powers, duties and functions of the Highway Reciprocity Commission, Chapter 301 RSMo, by type II transfer to the Department of Revenue. The definition of a type II transfer given in Section 1.7(1)(b) of the Reorganization Act includes '...the employment and discharge of employees,....' In addition, Section 1.6(4)(a) of the Reorganization Act gives the Department of Revenue '...exclusive budget-making powers...for each... commission....' It is not clear whether the budget-making power of the Department of Revenue or the authority to supervise the employment and discharge of employees includes supervision over and determination of any salary increases for those employees."

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As you have noted under the provisions of Section 301.273, RSMo, the Missouri Highway Reciprocity Commission, which is composed of the Governor, the Attorney General, the Chairman of the Public Service Commission, the Director of Revenue, the Superintendent of the Missouri State Highway Patrol, and the Chief Engineer of the Highway Department, has the authority to ". . . fix the compensation of . . . employees within the amount appropriated by the general assembly."

Also, as you have noted, the provisions of the Omnibus State Reorganization Act of 1974 (C.C.S.H.C.S.S.C.S.S.B. No. 1, 77th General Assembly), subsection 5 of Section 12 provide:

"All the powers, duties and functions of the highway reciprocity commission, chapter 301, RSMo, are transferred by type II transfer to the department of revenue."

The Reorganization Act also provides, subsection 7(b) of Section 1:

"Under this act a type II transfer is the transfer of a department, division, agency, board, commission, unit, or program to the new department in its entirety with all the powers, duties, functions, records, personnel, property, matters pending, and all other pertinent vestiges retained by the department, division, agency, board, commission, unit or program transferred subject to supervision by the director of the department. Supervision by the director of the department under a type II transfer shall include, but shall be limited to: budgeting and reporting under subdivisions (4) and (5) of subsection 6 of this section; to abolishment of positions, other than division, agency, unit or program heads specified by statute; to the employment and discharge of division directors; to the employment and discharge of employees, except as otherwise provided in this act; to allocation and reallocation of duties, functions and personnel; and to supervision of equipment utilization, space utilization, procurement of supplies and services to promote economic and efficient administration and operation of the department and of each agency within the department. Supervision by the director of the department

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under a type II transfer shall not extend to substantive matters relative to policies, regulative functions or appeals from decisions of the transferred department, division, agency, board, commission, unit or program, unless specifically provided by law. The method of appointment under type II transfer will remain unchanged unless specifically altered by this act or later acts." (Emphasis added)

It is our view that it is particularly significant that the legislature granted the Director the authority to employ and discharge employees under a type II transfer because we believe that the power to employ personnel necessarily includes the fixing of employee compensation in positions not covered by the merit system. While it is axiomatic that repeals by implication are not favored, we conclude that the reorganization provisions noted above repealed by implication the Commission's authority to set the compensation of its employees because such provisions vest that power in the Director of the Department of Revenue.

Such a conclusion, we believe, is consistent with the intent of the legislature in effecting reorganization.

CONCLUSION

It is the opinion of this office that the Omnibus State Reorganization Act of 1974 authorizes the Director of Revenue to approve all salary increases for employees of the Missouri Highway Reciprocity Commission.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General