

STATE HIGHWAY DEPARTMENT:

Salaries of all employees.

8-30
August 29, 1933



Honorable Richard R. Nacy
State Treasurer
Jefferson City, Missouri

Dear Mr. Nacy:

This Department acknowledges receipt of your letters of August 19, and August 25, 1933, relating to salaries of the employees of the State Highway Department. As the subject matter of both letters is the same, we are herewith answering the letters in one opinion. Your letters are quoted below:

"Under the provisions of Section 2-A of House Bill No. 652 found at pages 113-114 of the Session Acts, 1933, the employees of the State Highway Commission are reduced in salary in various amounts depending upon the salary received during the year 1932.

If an employee of the Highway Department is promoted to a position of higher rank and salary than the one held in 1932, is it legal under the above Section to pay said employee an increase in salary commensurate with the position now held?

As an example, - if Richard Roe, who in 1932 was an Assistant Auditor at a salary of \$200.00 per month, were promoted in June 1933 to Auditor at a salary of \$400.00 per month, is it legal to pay said Richard Roe the salary previously received by the Auditor, to wit \$400.00 per month?

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In other words, is it legal to pay the salary for the position held without regard to the name of the person holding it? "

"Under the provisions of Section 2a of House Bill No. 652, found at pages 113-114 of the Session Acts, 1933, the employees of the State Highway Commission are reduced in salary in various amounts depending upon the salary received during the year 1932.

If a present employee of the Highway Department has been employed since the adjournment of Legislature 1933, may the Highway Commission fix his salary at a greater amount than that received by his predecessor, or by an employee of the same rank and doing similar work in the year 1932?

As an example, if Richard Roe were Auditor of the Highway Department in 1932 at a salary of \$400.00 per month and said Richard Roe is discharged and is replaced by John Doe June 1, 1933, would it be legal for the Commission to authorize and the Auditor to audit and the Treasurer to pay the said John Doe a salary greater than that received by Richard Roe? In other words, would it be legal to pay John Doe \$450.00 per month when his predecessor, who did the same work and had the same rank in the year 1932 received \$400.00 per month?

The point I wish particularly explained is whether an employee of the Highway Department who had no status with the Highway Department in 1932 is allowed to receive a larger salary for doing the same work than he could have received had he been employed by the Commission in the year 1932.

Since there are but a few days intervening between this and the regular payday for the Highway Commission employees I shall appreciate your usual prompt attention to this request."

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We have heretofore rendered an opinion to the Honorable Louis V. Stigall embodying the questions as to the salaries of the legal department of the Highway Department, and are inclosing a copy of the opinion, but as your letter seems to affect all of the employees of the Highway Department and presents a different situation, we shall endeavor to make this opinion cover every situation.

In the opinion to Mr. Stigall we held unequivocally that the law as passed by the Legislature, page 114, of 1933, related to the positions held by the employees of 1932 and have no reference or relation to the individual or person holding the office at that time. In other words, the reduction was as to the position and not to the individual. Bearing this in mind then an employee in the Highway Department promoted to a different position and now receiving a greater salary, is entitled (under Section 2a, page 114 of the Session Acts of 1933) to receive the salary paid to the holder of said position in 1932, after the proper percentage of reduction is made, the same being according to the range of the salary in Section 2a. It is therefore legal "to pay the salary for the position held without regard to the name of the person holding it" after the proper percentage of reduction has been applied to the amount the position was paying in 1932.

Referring to the second paragraph of your letter of August 25, "If an employee has been added to the Highway Department since adjournment of the Legislature, may the Highway Commission fix his salary at a greater amount than that received by his predecessor?" It is the opinion of this Department that the Highway Commission can not increase the salary of any employee or the salary of the position held by any employee if the position was in existence prior to the time the present law became effective. In other words, the salary of any employee can not be increased by the Commission if the Commission had already fixed the salary prior to the passage of the law, and irrespective of the person holding the position he is subject to the reduction, the amount being according to the range in salaries as set forth in Section 2a. The Commission can only fix, at the present time, the salary of an employee who is taking a position, said position being newly created or one which did not exist prior to the effective date of Section 2a.

As to the last statement in your letter, "The point I wish particularly explained is whether an employee in the Highway Department who had no status with the Highway Department in 1932 is allowed to receive a larger salary for doing the same

Honorable Richard R. Macy

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work than he could have received had he been employed by the Commission in 1932." We believe that we have answered this above, but will repeat that the reduction and amount of the salary of a position (not the person) of every position in the Highway Department which existed in 1932, is now fixed and that no employee irrespective of whom he might be, can receive a greater salary than the holder of the same position was receiving in 1932, and that "John Doe" can not receive \$450.00 per month if his predecessor who held the same position in 1932 received \$400.00 per month, and further than that the said "John Doe" if he receives the salary of his predecessor, namely, \$400.00, he must accept the percentage of reduction as set out in the range of salaries in Section 2a.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

OWN:LC

Inclosure