

Wagner-Peyser Bill does not require civil service for
the Missouri State Employment Service.

August 15, 1935.

8.16



Mrs. Mary Edna Cruzen, Director,
Missouri State Employment Service,
Jefferson City, Missouri.

Dear Mrs. Cruzen:

This will acknowledge receipt of your
inquiry, which is in part as follows:

"Under the provision of the
Wagner-Peyser Bill, can the
Director of the United States
Employment Service require the
State of Missouri to accept the
Merit System (or civil service)
as a provision for appointment
to the staff of the Missouri
State Employment Service?"

In an opinion rendered you by this department
under date of June 13, 1935, the provisions of Senate Bill
No. 510, known as the Wagner-Peyser Act, Public No. 30, 73rd
Congress, 48 Stat. 113 (hereinafter referred to as the Act),
establishing a National Employment System, were taken up and
discussed.

Section 4 provides that in order for a state
to obtain the benefits of the appropriation carried in the act,
the state "shall, through its legislature, accept the provisions
of this Act and designate or authorize the creation of a state
agency vested with all powers necessary to cooperate with the
United States Employment Service under this Act."

By the provisions of House Bill No. 54, which
has been finally passed and signed by the Governor (without an
emergency clause), the State of Missouri accepted the provisions
of said Act. Section 13188 thereof says:

"The State of Missouri hereby accepts the provisions of the Act of Congress approved June 6, 1933, entitled 'An Act to provide for the establishment of national employment system and for cooperation with the states in the promotion of such system, and for other purposes.'"

Section 9 of the Act provides that the Director of the United States Employment Service may withhold benefits under the Act where the state fails to comply with his rules and regulations and standards of efficiency, thus:

"Each state agency cooperating with the United States Employment Service under this Act shall make such reports concerning its operations and expenditures as shall be prescribed by the director. It shall be the duty of the director to ascertain whether the system of public employment offices maintained in each state is conducted in accordance with the rules and regulations and the standards of efficiency prescribed by the director in accordance with the provisions of this Act. The director may revoke any existing certificates or withhold any further certificate provided for in Section 7, whenever he shall determine, as to any state, that the cooperating state agency has not properly expended the moneys paid to it or the moneys herein required to be appropriated by such State, in accordance with plans approved under this Act."

Section 12 of the Act provides:

"The director, with the approval of the Secretary of Labor, is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act."

We assume from your inquiry that the Director, with the approval of the Secretary of Labor, adopted a rule requiring the use of the Merit System (or civil service) as an incident to appointment to state employment agencies affiliated with the United States Employment Service. Your question is whether, under the terms of the Wagner-Payser Act, the Director can require the State of Missouri to accept such rule.

This department requested the Attorney General of the United States to render us an opinion as to the validity of the regulation hereinunder consideration. We were, however, unable to obtain this opinion and it therefore becomes our duty to determine whether or not this regulation is within the scope of the Act.

Section 2 of the Wagner-Peyser Act provides in part as follows:

"The Secretary of Labor is authorized, without regard to the civil service laws, to appoint and, without regard to the Classification Act of 1923, as amended, to fix the compensation of one or more assistant directors * * * *"

It will be seen from the very provisions of the Act itself that it was not the intention of Congress that the civil service laws should apply with reference to appointments under the Wagner-Peyser Act. Section 4 of the Act provides:

"In order to obtain the benefits of appropriations apportioned under Section 5, a State shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act."

In view of this section of the Act, there can be no question but that the Missouri State Employment Service is a State agency and not a branch of the Federal Government.

While it is true that Sections 9 and 12 of the Act give to the Director of the United States Employment Service power to make regulations, this power does not have the effect of endowing the Director with the power to legislate or in any manner amend the Act.

In the case of International Railway Commission v. Davidson, 66 L. Ed. 341, Mr. Justice Brandeis, in passing on the power of the Secretary of the Treasury to make regulations, said:

"Section 161 does not confer upon the Secretary any legislative power * * *. A regulation to be valid, must be reasonable and must be consistent with law."

In the very recent case of Miller v. United States, 79 L. Ed. 478, Mr. Justice Sutherland said with respect to an administrative regulation:

"It is invalid because not within the authority conferred by the statute upon the director * * * * to make regulations to carry out the purposes of the Act * * *. The only authority conferred, or which could be conferred by the statute, is to make regulations to carry out the purposes of the Act--not to amend it."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the Director of the United States Employment Service, under the authority conferred upon him by the Wagner-Peyser Act, does not have the power to require the State of Missouri to accept the Merit System (or civil service) as a provision for appointment to the staff of the Missouri State Employment Service.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.