

Mo. STATE HIGHWAY PATROL: Designation of "sergeant" instead of "patrolman" is immaterial so long as compensation does not exceed that of patrolman; maximum employees of Patrol, exclusive of janitors and clerks are 10 captains and 115 patrolmen; Commission can increase salary of enlisted men who have served five years 10% or any other per cent if it does not exceed \$2400 for captains and \$1800 for patrolmen.

12-7
December 4, 1936.



Honorable Charles F. Carter,
Budget Commissioner,
Jefferson City, Mo.

Dear Sir;

This department is in receipt of your letter of November 28, wherein you request an opinion in regard to the budget of the Missouri State Highway Patrol. Your letter embodying the facts is as follows:

"Will you please tell us if there is any provision in the law to pay sergeants a salary under the Patrol Act. I can find none.

"What is the maximum number of employees they can employ under the Act outside of janitors and clerks? Can the Commission increase the pay of enlisted men who have served five years 10 per cent or any other per cent?"

I

The first paragraph of your letter relates to the question of sergeants receiving a salary under the Patrol Act. The Missouri State Highway Patrol was created by statute; its powers, activities and members are controlled and limited by the Act itself, as contained in Laws of Mo. 1931, p. 231, Secs. 1 to 20 inclusive. Therefore, if we are to determine the legality of a sergeant receiving compensation under the Act, it must be gleaned either specifically or impliedly from the terms of the statute.

Section 1, p. 231, contains the expression - "There is hereby created a force consisting of a Superintendent and other officers and patrolmen, as herein provided * * *" Section 2 of the Act contains the words "'members of the patrol' as used in this Act shall be deemed and taken to mean the Superintendent, captains and patrolmen of the Missouri state highway patrol."

Section 4, p. 232, provides in part that "The Superintendent shall appoint ten (10) captains, who shall have the same qualifications as the Superintendent. Captains shall receive salaries to be fixed by the Superintendent not to exceed the sum of two thousand four hundred (\$2,400.00) dollars each per year * * *"

Section 5, pertinent to the question, is as follows:

"The superintendent shall appoint patrolmen not exceeding one hundred and fifteen (115) in number who shall receive salaries to be fixed by the superintendent not exceeding the sum of eighteen hundred (\$1800.00) dollars each per year. Patrolmen shall be not less than twenty-four (24) years of age at the time of their appointment."

Section 7 of the Act, page 233, pertinent to the question, is as follows:

"* * * All lawful rules and regulations of the superintendent shall be obeyed by the members of the patrol on pain of dismissal or such lighter punishment either by suspension, fine, reduction in rank or forfeiture of pay or otherwise as the superintendent may adjudge."

Section 8, referring to the administrative rules and regulations, gives the Superintendent authority to classify and rank captains and patrolmen - "All promotions to a higher grade or rank shall be made from the next lower grade."

Section 9 gives the Superintendent authority to furnish the members of the patrol with "such * * * insignia of office as the Superintendent may deem necessary."

Bearing in mind that by the terms of Section 4 the Superintendent is limited in his appointment to ten (10) captains, who are to receive not to exceed \$2,400.00 per annum, and under Section 5 he is limited to the appointment of one hundred fifteen (115) patrolmen, whose salaries are not to exceed \$1800.00 per annum, and while no mention is made of the appointment of sergeants, yet we are of the opinion that by virtue of the other sections herein quoted giving him the right to classify and rank captains and patrolmen and to reduce members of the patrol in rank or to promote them, the Superintendent may use such army designations as he may see fit in carrying out the intention of the Legislature in enacting the Act.

We assume that you are interested in the matter from the standpoint of the budget of the State Highway Patrol and that the rank of sergeant appears instead of captain or patrolman. We

are of the opinion that if the salary of "sergeant" does not exceed the compensation as provided for patrolman, then the designation "sergeant" instead of "patrolman" is immaterial in so far as the budget is concerned.

II

Your second question relates to the number of employees that may be employed under the Act exclusive of janitors and clerks.

Section 19 of the original Act (Laws of Mo. 1931, p. 236) was repealed and a new section enacted in lieu thereof (Laws of Mo. 1933, p. 409) and among other things the section provides that the State Highway Commission shall employ and assign to the Superintendent such clerical force and other subordinates as are necessary and shall furnish to the patrol office equipment, etc. Therefore, the number of clerks and other employees is left to the discretion of the State Highway Commission. However, as to the maximum number of employees, exclusive of janitors and clerks, we think the number of captains as set forth in Section 4, supra, and the number of patrolmen as set forth in Section 5, supra, are the maximum number that may be appointed by the Superintendent.

III

Your last question is to the effect - "Can the Commission increase the pay of enlisted men who have served five years 10 per cent, or any other per cent?"

Sections 4 and 5 of the Act (Laws of Mo. 1931, p. 232) state in each instance that the salary is not to exceed certain amounts. In 1933, the Legislature, at page 114 (Laws of Mo. 1933) passed what might be termed a blanket reduction in the salaries of the members and officials of the State Highway Department. The State Highway Patrol is under the control of the State Highway Commission, yet it is merely an auxiliary of said Commission, and we are of the opinion that the reduction in salaries and the limitation as contained in Section 2a (Laws 1933, p. 114) has no reference to the reduction of salaries of members of the State Highway Patrol.

We are also of the opinion that the Commission can increase the salary of enlisted men who have served five years 10%, or any other per cent, provided the increase in pay does not exceed

\$2400.00 in the case of captains and \$1800 in the case of patrolmen.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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