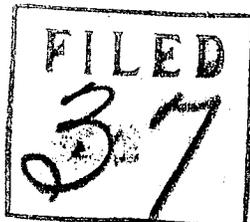


DEPARTMENT OF CORRECTIONS:
PENAL INSTITUTIONS:
PERSONNEL OFFICERS:
PUBLIC OFFICERS:

Department of Corrections of the State of Missouri may, within its discretion, establish a bureau of personnel pursuant to Section 216.050, RSMo 1949, and said department may, within the limits

of its appropriation for such purposes, employ such personnel as it considers necessary to discharge the functions of that bureau. It is within the discretion of the Department of Corrections whether to appoint a person to supervise said personnel bureau.



February 15, 1954

Honorable C. D. Hamilton
Representative, Ralls County
New London, Missouri

Dear Sir:

By letter of January 30, 1954, you requested an official opinion as follows:

" * * * After Mr. J. K. Walsh left the office of Personnel, Division of Penal Institutions, Mr. Thomas E. Whitecotton, Director of Penal Institutions, instead of appointing another man, took charge of the office himself.

"Wasn't this office set up by statute? If so, shouldn't it be filled? If it is of no use, then we should abolish it."

The only statutory authorization for establishing a personnel bureau within the Department of Corrections is by Section 216.050, RSMo 1949:

"The department of corrections may establish such bureaus as research and statistics, personnel, finance and other bureaus which it may deem necessary and desirable in carrying on the work of the department."

Honorable G. D. Hamilton

Note particularly that the statute states that such a bureau "may" be established. The Supreme Court of Missouri in State ex rel. v. Holt County Court, 39 Mo. 521, l.c. 524, gives this rule as to when the word "may" should be construed as mandatory, rather than as permissive:

"* * * Quite a list of authorities, touching the proper construction of the word 'may' as used in statutory enactments, has been presented in the petitioner's brief, all of which have been carefully examined. These authorities are uniformly to the effect that the word is only to be construed as mandatory for the purpose of sustaining or enforcing a right, but never to create one. * * *"

Thus it is concluded that the Legislature has given permission to establish such a bureau, but that the statute does not absolutely require the Department of Corrections to establish a personnel bureau. Mr. J. K. Walsh was for some time the personnel officer of the personnel bureau of the division of penal institutions. There is no statute setting up the office of "personnel officer." The Supreme Court of Missouri in State v. Pretended Consolidated School Dist. No. 3 of St. Charles County, 240 S.W. (2d) 946 declared the primary purpose of statutory construction to be, l.c. 950:

"The primary purpose of statutory construction is to ascertain and give effect to the expressed legislative intent.
* * *"

In interpreting a statute we must further be guided by Section 1.090, RSMo 1949, which reads as follows:

"Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

Therefore, in taking the words and phrases of Section 216.050, quoted above, in the plain and ordinary sense, it must be concluded that the Legislature intended to leave to the discretion and judgment of the Department of Corrections whether a bureau of personnel is necessary, and to

Honorable C. D. Hamilton

give that department discretionary authority to employ the personnel it considers necessary to discharge the functions of said bureau, within the limit of moneys appropriated for such purpose.

CONCLUSION

In the premises, therefore, it is the opinion of this office that the Department of Corrections of the State of Missouri may, within its discretion, establish a bureau of personnel pursuant to Section 216.050, RSMo 1949; and said department may, within the limits of its appropriation for such purposes, employ such personnel as it considers necessary to discharge the functions of that bureau. It is within the discretion of the Department of Corrections whether to appoint a person to supervise said personnel bureau.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:vlw