

DIVISION OF MENTAL DISEASES:
ELEEMOSYNARY INSTITUTIONS:

Applicable rules for determination of eligibility for employment by Division of Mental Diseases of members of American Friends Institutional Service Unit.



March 10, 1955

Honorable B. E. Ragland
Director, Division of Mental Diseases
Department of Public Health and Welfare
State Office Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The American Friends Service Committee has offered to place an Institutional Service Unit in one or more of the state mental hospitals. These Service Units are composed of students who have been screened by the committee and found to be suited for this type of work. The unit will be employed at the hospital for a period of ten weeks during the summer months and will be considered as employees of the hospital, receiving pay comparable to Hospital Attendants.

"Section 191.070, RSMo., 1949, provides in part as follows: 'Such employees shall be persons of good character and integrity and residents of this state for one year, except that residence in this state shall not be necessary in cases of appointment of physicians, nurses, technicians, dietitians, and other professionally trained personnel.'

"Since some of the members of the unit will not be citizens of the State of Missouri and in view of the above-mentioned section, I respectfully request

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your official opinion as to whether or not the members of the unit must be limited to citizens of the State of Missouri.

"For your information, I am herewith enclosing brochure published by the American Friends Service Committee."

At the outset, we wish to direct your attention to a portion of Section 19, Article IV, Constitution of Missouri, reading as follows:

"* * * All employees in the state eleemosynary and penal institutions, and other state employees as provided by law, shall be selected on the basis of merit, ascertained as nearly as practicable by competitive examinations; * * * * *"

Pursuant to the constitutional directive contained in the quoted provision, the General Assembly has enacted what now appears as Section 191.070, VAMS, relating to the employment of personnel by the Department of Public Health and Welfare. Paragraph 1. of the section mentioned reads as follows:

"1. All employees of the department of public health and welfare, except the department director, the division directors, and one secretary for each director, chaplains, patients or inmates of state charitable institutions who may also be employees in such institutions, and persons employed in an internship capacity as a part of their formal training leading to an academic degree, shall be selected in accordance with the state merit system law, notwithstanding that such office, position, or employment may be specifically exempted under the state merit system law. Such employees shall be persons of good character and integrity and residents of this state for one year, except that residence in this state shall not be necessary in cases of appointment

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of physicians, nurses, technicians, dietitians, and other professionally trained personnel."

It is noted that persons employed in an internship capacity, as a part of their formal training leading to an academic degree, have been specifically exempt from the provisions of the statute. However, you have, subsequent to your official request, advised the writer that the proposed employees do not fall within such exempt category. We, therefore, deem it necessary to point out that the employment of such persons, if found otherwise eligible in accordance with what is said hereinafter, must be subject to the applicable provisions of the state merit system.

Your specific question is directed to the possible exemption from the residential requirements contained in the statute of the employees mentioned by virtue of the exemption therefrom of "physicians, nurses, technicians, dietitians and other professionally trained personnel."

It is a general rule of statutory construction that the inclusion of items specifically enumerated followed by a more general and apparently all-inclusive phrase requires that a construction be adopted that excludes from the all-inclusive phrase items except those of the same nature as specifically enumerated. Applying this rule, it appears that the General Assembly has intended to exempt from the residential requirements only appointees of the same general character as those enumerated, i. e., physicians, nurses, technicians and dietitians. We have no information as to the exact nature of the professional training previously received by the persons making up the Institutional Service Unit referred to in your letter of inquiry. If their past training has been such as to permit their inclusion within the phrase "other professionally trained personnel," it appears that they are exempt from the statutory residential requirements. A contrary conclusion, of course, must be reached if the status of such persons is not such as to bring them within the meaning of the phrase quoted. This being a question of fact, the determination of the exact status of any one prospective employee must be left to the discretion vested in the appointing power to be exercised upon the basis of applicable facts.

CONCLUSION

In the premises, we are of the opinion that:

1. Prospective employees of the Division of Public Health

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and Welfare, to be supplied through an American Friends Institutional Service Unit in the capacity outlined in your letter of inquiry and subsequent telephonic conversation, must comply with the requirements of the state merit system; and,

2. Such prospective employees are exempt from the statutory residential requirement of one year contained in Section 191.070, VAMS, only if their status is such as to be comprehended within the phrase, "other professionally trained personnel" as used in such section.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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