

WATER POLLUTION BOARD: All employees of the Water Pollution Board come within the compass of the merit system, except for the exemptions noted in Section 191.070, RSMo, Cum. Supp. 1957. The Water Pollution Board is an "appointing authority" within the meaning of Section 36.020, House Bill No. 111 enacted by the 70th General Assembly.

January 29, 1960



Honorable N. F. Steenberger  
Director, Personnel Division  
100 E. Capitol Avenue  
Jefferson City, Missouri

Dear Mr. Steenberger:

Your request for an official opinion reads:

"Questions have been raised recently concerning the positions and employees of the State 'Water Pollution Board' being subject to the State Merit System Law. Since the enactment of Section 204, RSMo, Cum. Supp. 1957, employees of the State Division of Health have performed duties involving the function of water pollution and the 'Water Pollution Board' has been considered an operating unit of the Division of Health.

"Under date of September 25, 1959, the Acting Director of the Division of Health advised this office he no longer considered the Division of Health the appointing authority for the 'Water Pollution Board.' Apparently there is some conflict between the Division of Health and the 'Water Pollution Board' relating to the final administrative control and authority for water pollution activities in the State. As I understand the situation, certain employees of the Division of Health who have Merit System status are being transferred to the 'Water Pollution Board' and the Board will presumably operate as a separate agency of State Government.

"The question, therefore, arises as to the Merit Law applying to positions and employees of this Board. The following portions of the Merit System Law and portions of the Water Pollution Law appear to be pertinent:

"Section 36.020, RSMo 1949, (1) 'appointing authority' means an officer or agency subject

to this Law having power to make appointments;  
(2) 'Division of Service' means a state department or any division or branch thereof, or any agency of the state government, all the positions and employees in which are under the same appointing authority.

"Section 36.030 -2- 'The provisions of this Chapter shall apply to all offices and employees of the State Department of Public Health and Welfare . . . , except such offices, positions and employees within the above named agencies as are herein specifically exempt.' -3- 'The following offices, positions and appointments in the agencies covered by this Chapter are hereby exempted from the operation of this law and may be filled without regard to those provisions hereof which relate to the selection, appointment, pay, tenure, and removal of persons employed in such agencies;' . . .

"(2)'One secretary for each board or commission, the members of which are appointed by the Governor . . .'

"Section 204.070 -1, RSMo, Cum. Supp. 1957:  
'There is hereby created within the Division of Health of the Department of Public Health and Welfare a State Water Pollution Board . . . ' -4- ' . . . The members of the board, at their first meeting, shall select a qualified executive secretary for the board who shall act as its administrative agent.'

"Section 204.140 ' . . . The board, in addition, may employ the technical and clerical personnel it deems necessary, . . .'

"We are particularly interested in knowing if the 'Water Pollution Board' is considered an 'appointing authority' and a 'Division of Service' within the meaning of Section 36.020 (1) and (2) of the Revised Statutes of Missouri, 1949. Or, is this 'Board' only a part of the Division of Health which is the 'appointing authority' and the 'Division of Service' for employees of the Water Pollution Board? Secondly, is the Executive Secretary referred to in Section 204.070 -4, RSMo, Cum. Supp. 1957, exempt under Section 36.030 (2) and (3), RSMo 1949? Further, are employees of the Water Pollution Board employed pursuant to Section 204.140, RSMo, Cum. Supp. 1957, subject to the Merit System Law as provided for in Section 36.030 (2), RSMo 1949?"

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On October 14, 1948, this department rendered an opinion, a copy of which is enclosed, to Honorable Ralph J. Turner, Director, Personnel Division, Department of Business and Public Administration, Jefferson City, Missouri. We believe that this opinion is applicable to the employees of the Water Pollution Board generally. We also enclose a copy of an opinion rendered October 1, 1952, to the Board of Trustees, State Federal Soldiers' Home, St. James, Missouri. We believe that this opinion substantiates the Turner opinion, and that the two opinions are authority for the proposition that employees of the Water Pollution Board do come within the compass of the merit system. We believe that on the basis of the two above opinions that employees of the Water Pollution Board, which is created within the Division of Health of the Department of Public Health and Welfare, are employees of the Department of Public Health and Welfare, and that since employees of the Department of Public Health and Welfare, with certain exceptions, are under the merit system, that employees of the Water Pollution Board are also under the merit system.

You inquire particularly regarding the Secretary of the Water Pollution Board, which is provided for in numbered paragraph 4 of Section 204.070, RSMo, Cum. Supp. 1957. Your inquiry is as to whether or not this Secretary comes within the merit system. That paragraph reads:

"4. At the first meeting of the board and at yearly intervals thereafter, the members shall select from among themselves a chairman and a vice-chairman. The members of the board, at their first meeting, shall select a qualified executive secretary for the board who shall act as its administrative agent."

In connection with the above we note the following portions of Section 36.030 of House Bill No. 111 enacted by the 70th General Assembly. That Bill reads in part:

"1. A system of personnel administration based on merit principles and designed to secure efficient administration is established for all offices, positions and employees of the state department of public health and welfare, the state department of corrections, the personnel division of the department of business and administration and the division of employment security of the department of labor and industrial relations, except that the following offices and positions of these agencies are not subject to this law and may be filled without regard to its provisions:

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(2) One secretary for each board or commission the members of which are appointed by the governor, except the personnel advisory board."

From the above it would appear that the Secretary of the Water Pollution Board was exempted from the application of the Merit System Law. However, we also note numbered paragraph 1 of Section 191.070, RSMo, Cum. Supp. 1957, which reads:

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

It will be noted that this section holds that, with certain exceptions which do not include the Secretary of the Water Pollution Board, that all other employees 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."

Under the State Merit System Law we believe that the Secretary of the Water Pollution Board is exempted from the application of the merit system, but obviously, since he is not within any of the exceptions set forth in Section 191.070, supra, he comes within the application of the Merit System Law by virtue of that section. We believe that this is a situation in which Section 36.030 of House Bill No. 111, supra, is a general law on this subject, and that Section 191.070, supra, is a special law. It is a well-established principle of Missouri law that where a general law and a special law are in conflict, as would appear to be the case here, that the special law prevails.

In the case of *Vining v. Probst*, 186 SW2d 611, the Kansas City Court of Appeals stated (l.c. 615 [1-4]):

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"\* \* \* If there be any conflict between two statutes dealing with the same common subject matter, the statute which deals with it in a minute and particular way will prevail over one of a more general nature; and the statute which takes effect at the later date will also usually prevail. Measured by both of these last mentioned rules, the provisions of the 'Small Loan Laws' prevail over those of the interest laws. If the later law did repeal the earlier, in part, by implication, it did so only insofar as the two may be in conflict; but, in any event, it is apparent that there are cases, such as that now under consideration, where the provisions of both statutes cannot be applied effectively. State v. Taylor, 323 Mo. 15, 18 SW2d 474, l.c. 477."

The same holding was made in the case of State v. Mangiaracina, 125 SW2d 58, l.c. 60 [1-4]. Also in the case of State v. Smith, 125 SW2d 883, l.c. 885 [5-8]. It would, therefore, seem that employees of the Water Pollution Board would come within the compass of the State Merit System Law.

You also inquire whether the Water Pollution Board is an "appointing authority" and a "division of service" within the meaning of the law.

We note by House Bill No. 111 enacted by the 70th General Assembly that Section 36.020 states:

"Unless the context clearly requires otherwise, the following terms mean:

(1) 'Appointing authority,' an officer or agency subject to this law having power to make appointments;

\* \* \* \*

(3) 'Division of service' or 'division,' a state department or any division or branch thereof, or any agency of the state government, all the positions and employees in which are under the same appointing authority."

Inasmuch as the Water Pollution Board is given authority under Section 204.070 and Section 204.140, RSMo, Cum. Supp. 1957, to directly employ personnel, we would say that the answer to your question regarding whether the Water Pollution Board is an "appointing authority" is in the affirmative.

You have orally informed us that we may disregard your question as to whether the Water Pollution Board is a "division of service."

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CONCLUSION

It is the opinion of this department that all employees of the Water Pollution Board come within the compass of the merit system, except for the exemptions noted in Section 191.070, RSMo, Cum. Supp. 1957.

It is the further opinion of this department that the Water Pollution Board is an "appointing authority" within the meaning of Section 36.020, House Bill No. 111 enacted by the 70th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON  
Attorney General

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Enclosure