

AIR CONSERVATION COMMISSION: 1. The position of executive  
MERIT SYSTEM: secretary to the Air Conservation  
Commission is a merit system employee.  
2. The secretary of the executive  
secretary is a merit system employee. 3. All other employees of  
the Air Conservation Commission are merit system employees except  
those specifically exempted by Section 191.070, RSMo 1959. 4. The  
Air Conservation Commission has the power under Section 203.040(4),  
RSMo Cum. Supp. 1965, to fix the salary of the executive secretary,  
not to exceed twelve thousand dollars per annum.

Opinion No. 249

June 7, 1966



Honorable Lewis C. Green  
Chairman of Air Conservation Commission  
State of Missouri  
Missouri Division of Health  
State Office Building  
Jefferson City, Missouri

Dear Mr. Green:

This is in answer to your request for an opinion which  
reads as follows:

"The Air Conservation Commission has unan-  
imously requested that I request the opinion  
of the Attorney General on the following  
three questions:

1. Is the position of executive secretary to  
the Air Conservation Commission a Merit System  
employee?
2. Is his secretary a Merit System employee?
3. Are other persons who may be hired by the  
Air Conservation Commission Merit System  
employees?

We will appreciate your prompt attention to  
this request."

Section 36.030, RSMo 1959, of the State Merit System Law  
reads in part as follows:

- "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 Department of Public Health and Welfare is composed of three divisions, one of them being the Division of Health. Section 191.010, RSMo 1959.

Section 203.040, RSMo Cum. Supp. 1965, of the Missouri Air Conservation Law enacted in 1965 reads in part as follows:

"1. There is created hereby an air pollution control agency to be known as the 'Air Conservation Commission of the State of Missouri', whose domicile for the purposes of this chapter shall be deemed to be that of the division of health of the department of public health and welfare of the state of Missouri. \* \* \*"

\* \* \* \* \*

"4. The commission shall appoint an executive secretary who shall be a full-time employee of the division of health and who shall act as its administrative agent. The commission shall determine the compensation of, and pay from available appropriations for the executive secretary, but not to exceed the sum of twelve thousand dollars per annum."

It is our opinion that employees of the Air Conservation Commission, by virtue of being domiciled in the Division of Health of the Department of Public Health and Welfare are, with certain exceptions, under the merit system.

Section 36.030 (1), supra, excepts certain specific types of employees from the merit system. However Section 191.070, RSMo 1959, also makes specific exemptions for employees of the Department of Public Health and Welfare. Enclosed is Attorney General Opinion, dated January 29, 1960, to the Honorable N. F. Steenberger which states, in relation to employees of the Water Pollution Board, that Section 191.070 is a special law and Section 36.030, supra, is a general law, and therefore, Section 191.070 prevails. We adhere to that opinion and find that to

this extent it applies here.

Therefore, the only employees of the Air Conservation Commission not under the merit system are those exempted by Section 191.070, supra, which reads in part 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 of physicians, nurses, technicians, dietitians, and other professionally trained personnel."

The executive secretary, then, is a merit system employee, but the Air Conservation Commission by virtue of Section 203.040 (4), supra, as appointing authority has the power to fix his salary, not to exceed twelve thousand dollars per annum.

#### CONCLUSION

It is the opinion of this office that:

1. The position of executive secretary to the Air Conservation Commission is a merit system employee;
2. The secretary of the executive secretary is a merit system employee;

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3. All other employees of the Air Conservation Commission are merit system employees except those specifically exempted by Section 191.070, RSMo 1959.

4. The Air Conservation Commission has the power under Section 203.040(4), RSMo Cum. Supp. 1965, to fix the salary of the executive secretary, not to exceed twelve thousand dollars per annum.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly



NORMAN H. ANDERSON  
Attorney General

Enclosure (opinion):  
Steenberger, 1/29/60