

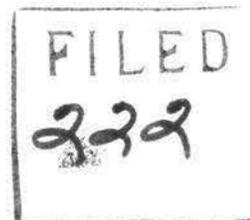
MERIT SYSTEM:

With respect to establishment of cafeterias and charging for meals to employees in institutions under the merit system that the Personnel Division has no authority to establish charges for such meals but that the appointing authorities do have the authority to determine whether meals will be furnished to employees and to determine the charge for such meals which is to be, with some exceptions, related to the actual cost of such meals to the state.

Opinion No. 222

September 28, 1970

Mr. Norris F. Steenberger
Director, Personnel Division
Department of Business and
Administration
P. O. Box 388
Jefferson City, Missouri 65101



Dear Mr. Steenberger:

This letter is in response to your opinion request in which you ask the following questions with respect to meal charges to employees of the various departments within the merit system:

- "(1) Does the Personnel Division have authority to establish such meals charges as a part of the Pay Plan? If so, does such schedule of charges apply only in instances where the Appointing Authorities require employees to eat at the institution?
- "(2) Do the Appointing Authorities have the prerogative of providing Cafeterias and setting their own food rates as a convenience for employees who choose to eat on the premises but still retain freedom of choice as to whether or not they eat their meals at the Hospital Cafeteria?"

Section 36.140, RSMo 1969, states in full as follows:

"After consultation with appointing authorities and the state fiscal officers, and after a public hearing, the director shall prepare and recommend to the board a pay plan for all classes subject to this law. Such pay plan shall include, for each class of positions, a minimum

Mr. Norris F. Steenberger

and a maximum rate, and such intermediate rates as the director considers necessary or equitable. In establishing such rates, the director shall give consideration to the experience in recruiting for positions in the state service, the rates of pay prevailing in the locality for the services performed, and for comparable services in public and private employment, living costs, maintenance, or other benefits received by employees, and the financial condition and policies of the state. Such pay plan shall take effect when approved by the board and the governor, and each employee appointed to a position subject hereto after the adoption of the pay plan shall be paid at one of the rates set forth in the pay plan for the class of positions in which he is employed; provided, that the state comptroller certifies that there are funds appropriated and available to pay the adopted pay plan. The pay plan shall also be used as the basis for preparing budget estimates for submission to the legislature insofar as such budget estimates concern payment for services performed in positions subject hereto. Amendments to the pay plan may be recommended by the director from time to time as circumstances require and such amendments shall take effect when approved as provided herein. The conditions under which employees may be appointed at a rate above the minimum provided for the class, or advance from one rate to another within the rates applicable to their positions, shall be determined by the regulations."

It seems clear that Section 36.140 authorizes the Personnel Director to give consideration to "other benefits received by employees" but does not authorize either the Director or the Personnel Advisory Board to establish meal charges for meals furnished by the appointing authorities. Further, we find no statutes vesting the Director of Personnel or the Personnel Advisory Board with the authority to establish meal charges for employees of the various institutions under the merit system.

It is our view that whether meals are made available to employees and the charges to be made for such meals are matters to be determined by the appointing authorities subject, of course, as the case may be, to the approval of the officer having the statutory policy and operational control.

Mr. Norris F. Steenberger

In answer to your second question, it is our view that the appointing authorities do have the prerogative of providing a cafeteria and setting food rates as a convenience for employees who choose to eat on the premises but who still retain the freedom of choice as to whether or not they eat their meals at such cafeteria.

In reaching this conclusion, we have taken into consideration, among other things, statutes such as Section 191.150, RSMo 1969, and Section 191.160, RSMo 1969, which relate to the Department of Public Health and Welfare.

That is, Section 191.150 provides:

"Any purchase of food in any institution under the control of the department of public health and welfare, other than the usual quality purchased for the inmates thereof, to be used by or for anyone other than the inmates of said institution shall be charged directly to the individual responsible for said purchase."

Section 191.160 provides:

"The department of public health and welfare may provide any employee in any institution under its control with board and living quarters in addition to salary, or wages, when the director shall determine that it is for the best interest of the state to do so."

Our conclusion is then, that, in the absence of an express prohibition, the appointing authorities may furnish meals to employees under the merit system at least at a figure that reflects the actual cost to the state.

CONCLUSION

It is, therefore, the opinion of this office with respect to establishment of cafeterias and charging for meals to employees in institutions under the merit system that the Personnel Division has no authority to establish charges for such meals but that the appointing authorities do have the authority to determine whether meals will be furnished to employees and to determine the charge for such meals which is to be, with some exceptions, related to the actual cost of such meals to the state.

Mr. Norris F. Steenberger

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General