LABOR:
MEDIATION BOARD: Missouri State Board of Mediation is not precluded from mediating dispute in industry subject to federal labor relations statutes, pursuant to Section 295.080, RSMo 1969, unless Federal Mediation and Conciliation Service actually assumes jurisdiction by proffering its services.

OPINION NO. 4

February 1, 1972

FILED
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Honorable R. J. King, Jr.
State Representative, District 39
Room 202I Capitol Building
Jefferson City, Missouri 65101

Dear Representative King:

This official opinion is issued pursuant to your written request in which you ask questions as follows:

> "A question has arisen as to whether the State Board of Mediation of Missouri as established by Chapter 295 of the Missouri Revised Statutes would be able to proceed in the manner set out in Section 295.080, with respect to a Labor dispute involving an investor owned electrical utility which is engaged in Interstate Commerce and which has properties in States other than Missouri, where the great majority of the employes are employed in Missouri and where the great majority of the Company's customers are also located in Missouri.
>
> "The question is whether the State Board of Mediation can function, in view of the provisions of the Labor-Management Relations Act and Chapter 29 United States Code, Sections 171 through 182, establishing the Federal Mediation and Conciliation Service."

Section 295.080, RSMo 1969, provides as follows:

> "1. Upon receipt of notice of any labor dispute between parties subject to this chapter, the [state] board [of mediation] shall require

> such parties to keep it advised as to the progress of negotiations therein.
>
> "2. Upon application of either party to a labor dispute or upon its own motion the board may fix a time and place for a conference between the parties to the dispute and the board or its representative, upon the issues involved in the labor dispute and shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.
>
> "3. It shall be the duty of all parties to a labor dispute to respond to the summons of the board for joint or several conferences with it or with its representatives and to continue in such conference until excused by the board or its representative."

This provision represents a proper matter of public concern and it is constitutionally valid except to the extent that its operation may have been preempted by the various federal statutes governing labor relations. State ex rel State Board of Mediation v. Pigg, 244 S.W.2d 75 (Mo. banc 1951).

The Federal Mediation and Conciliation Service (hereafter FMCS) exists by reason of 29 U.S.C., Sections 171 through 182. Under 29 U.S.C., Section 173(a) FMCS is obliged to:

> ". . . assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation."

The relationship between FMCS and state mediation agencies is illustrated by the following provisions of 29 U.S.C.

> ". . . The Director [of FMCS] may establish suitable procedures for cooperation with State and local mediation agencies. . . ."
> (Section 172(c))
>
> "The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to

> mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. . . ." (Section 173(b))

The question of federal preemption is illuminated very clearly by these statutory provisions. FMCS has the authority to assume jurisdiction and to proffer its services in any labor dispute which in its judgment "threatens to cause a substantial interruption of [interstate] commerce." It is not obliged to proffer its services in any specific dispute. It might decide that no mediation was necessary or helpful, or it might believe that state or other mediative agencies could provide adequate service. The field is preempted, then, to the extent that FMCS decides to assume jurisdiction in a particular case.

FMCS may allow state agencies to perform the mediative function. It is expressly directed to do so if it concludes that a particular dispute has only a minor threatening effect. It may also establish procedures prospectively, by authority of 29 U.S.C., Section 172(c). It may decide whether or not to enter a particular dispute, after the dispute has arisen.

We do not believe that the State Board of Mediation (hereafter "State Board") is required to keep away from a particular dispute until the FMCS has announced a definite decision as to whether or not it will enter the dispute. Nothing in the federal statutes requires any specific permission. FMCS assumes jurisdiction by actually proffering its services. The State Board would not be interfering with federal authority by entering a dispute, for the reason that the federal authority could be asserted at any time through a proffer of services and the effect of the proffer would be to exclude the State Board from future action in the particular dispute.

The State Board, then, could assume jurisdiction and proceed in the manner set out in Section 295.080, in any labor dispute having substantial Missouri incidents. Its action would not be precluded by the fact that the industry in question is subject to the federal labor relations statutes, or by the fact that employees who do not work in Missouri may be involved. The State Board does not have to wait for federal clearance, although as a practical matter it might find it expedient to consult with FMCS to determine their attitude toward entering the dispute. The authority of the State Board would continue until FMCS actually assumed jurisdiction by proffering its services.

Under Section 295.080, the State Board may require the parties to keep it informed and may require them to appear at joint and

several conferences. These provisions are only mildly coercive and we do not perceive any interference with the policy of the federal statutes. These statutes encourage resolution of disputes through mediation and conciliation.

We limit our opinion to action in mediation pursuant to Section 295.080. Substantial portions of Chapter 295 of the Missouri Revised Statutes, including highly coercive provisions, were held to be invalid in the light of federal law, in the case of Division 1287, Amalgamated Association v. Missouri, 374 U.S. 74 (1963). In State ex rel State Board of Mediation v. Pigg, supra, the Court held that the provisions of Chapter 295 relating to mediation were distinct and severable, and that as such they were constitutionally valid. This holding seems consistent with Amalgamated Association v. Wisconsin Employment Relations Board, 340 U.S. 383 (1951), which the Supreme Court of Missouri relies on.

CONCLUSION

It is the opinion of this office that the Missouri State Board of Mediation may proceed in accordance with the provisions of Section 295.080, RSMo 1969, by requiring the parties to a labor dispute having substantial effects in Missouri to keep it informed of progress or to attend joint or several conferences, and by otherwise promoting the settlement of the dispute through conciliation and mediation. The authority of the State Board is not foreclosed by reason of the federal statutes, even though the dispute in question affects interstate commerce, unless and until Federal Mediation and Conciliation Service assumes jurisdiction by proffer of its services in the manner specified in 29 U.S.C., Section 173.

The foregoing opinion which I hereby approve was prepared by my special assistant, Charles B. Blackmar.

Very truly yours,

JOHN C. DANFORTH
Attorney General