

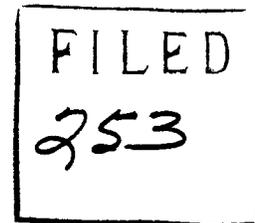
GOVERNOR:
CONSTITUTIONAL LAW:

The provisions of section 51, Article IV of the Missouri Constitution, requiring Senate confirmation of gubernatorial appointments, relates only to state executive branch officials.

OPINION NO. 253

September 12, 1972

Honorable Richard M. Webster
Missouri Senate
112 North Webb Street
Webb City, Missouri 64870



Dear Senator Webster:

This opinion is in response to your opinion request in which you ask for an interpretation of new constitution section 51, Article IV, Senate Committee Substitute for House Joint Resolution No. 65 of the 76th General Assembly, which states:

"The appointment of all members of administrative boards and commissions and of all department and division heads, as provided by law, shall be made by the governor. All members of administrative boards and commissions, all department and division heads and all other officials appointed by the governor shall be made only by and with the advice and consent of the senate. The authority to act of any person whose appointment requires the advice and consent of the senate shall commence, if the senate is in session, upon receiving the advice and consent of the senate. If the senate is not in session, the authority to act shall commence immediately upon appointment by the governor but shall terminate if the advice and consent of the senate is not given within thirty days after the senate has convened in regular or special session. If the senate fails to give its advice and consent to any appointee, that person shall not be reappointed by the governor to the same office or position."
(Emphasis added)

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In particular you inquire concerning the scope of the provision which we have underscored and whether or not the advice and consent of the Senate is required for the appointment of all officials throughout the state which the Governor may by law appoint initially or to fill vacancies in offices. Your question includes judicial offices of each category and level as well as county offices and notaries public.

A complete examination of the amendments to Article IV indicates that such amendments pertain only to the executive branch of the government. By section 12 of the amendment the executive department consists "of all state elective and appointive officials and employees except officials and employees of the legislative and judicial departments."

In this instance, in determining the intent of the people and the purpose for which the amendment was enacted, the doctrine of ejusdem generis should be applied. This rule of construction is stated in Hammitt v. Kansas City, 173 S.W.2d 70, 75 (Mo. 1943), as follows:

" . . . 'The ejusdem generis rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified.'"

Applying this rule of construction to the provision in question, which we have underscored above, it is our view that the phrase "all other officials appointed by the governor" refers to those appointed by the Governor in the executive or the administrative branch of the government other than members of administrative boards and commissions and department and division heads. Obviously some officials of the executive department are not included within the officers described as members of administrative boards and commissions, department and division heads. For example, the counsel for the Public Service Commission is appointed by the Governor under the provisions of Section 386.070, RSMo 1969, and is not a member of an administrative board or commission or a department or division head but would be included by the general language including all other officials.

Thus, reading the provision in question in its complete context and attempting to ascertain the intent of the people in adopting the amendment, which we must do by the basic rules of

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constitutional construction, we arrive at the conclusion that the reference to "all other officials" was intended to include those the Governor could appoint in the executive or administrative branch of the government who are not expressly included in the precisely described listing of executive officials.

CONCLUSION

It is the opinion of this office that the provisions of section 51, Article IV of the Missouri Constitution, requiring Senate confirmation of gubernatorial appointments, relates only to state executive branch officials.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH
Attorney General