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ATTORNEY GENERAL OF MISSOURI

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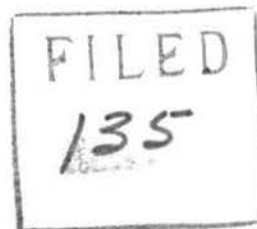
JOHN C. DANFORTH
ATTORNEY GENERAL

March 14, 1973

MASTER COPY

OPINION LETTER NO. 135

Mr. Charles Valier
Office of the Governor
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Valier:

This is in response to your request for an opinion of this office concerning Reorganization Plans 1 and 2 of 1973. You have explained that the purpose of both plans is to transfer all duties of the directors of the Departments of Business and Administration and Public Health and Welfare to other officers, since those two officers are mainly figure-heads with few real duties, and thus such duties could be easily performed by other officers with substantial reduction of personnel and savings of appropriations.

Plan No. 1 provides that all duties provided in Sections 35.010 through 35.050, RSMo, for the director of the Department of Business and Administration are transferred and assigned to the Commissioner of Administration.

Plan No. 2 provides that certain duties provided in Chapter 191, RSMo, for the director of the Department of Public Health and Welfare are transferred to the various division heads of the department.

Both plans have been submitted to the legislature pursuant to Sections 26.500 and to 26.540, RSMo.

The first question you ask is whether these plans are within the authority of the reorganization law. Section 26.540, RSMo, provides:

"Reorganization plans shall relate only to abolishing or combining agencies in the executive branch of the state

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government or to changing the organization thereof or the assignment of functions thereto. Each plan shall contain such provisions as are necessary to assure the uninterrupted conduct of the governmental services and functions affected by the proposed reorganization plan."

In Opinion No. 167, March 1, 1971, Patterson, we explained these provisions of law in relation to various reorganization plans and held that the law does not constitute an unconstitutional delegation of legislative power to the executive branch.

Therefore, we need only examine whether the plans meet the purposes of Section 26.540.

It is our opinion that the purpose of the plans is to transfer the "assignment of functions" from one officer to another, and therefore they are within the authority of the reorganization law. Furthermore, it appears obvious that each of the transfers are logical, in that the Commissioner of Administration is now directed by law to perform similar duties, Section 26.300, RSMo, and the various division heads of the divisions within the Department of Public Health and Welfare now also perform similar duties as the director of the department.

Your second questions is whether the plans accomplish the stated purpose. We have examined the plans and the statutory duties and it is our opinion that the plans do accomplish the stated purpose of the assignment of functions from one officer to another except for a possible problem of interpretation in paragraph 8 of Plan No. 2.

Your third question is whether paragraph 8 is valid in view of what you advise was a typographical error. Paragraph 8 now reads:

"8. All appeals provided for in Section 208.080, RSMo, 1969, shall be taken by the director of the Division of Welfare."
(emphasis supplied).

You advise that the word "by" should be "to" so that appeals are taken to the Division of Welfare.

The error is obvious because Section 208.080 provides now for appeals "to" the director of the Department of Public Health and Welfare. The stated purpose of the plan is simply to reassign functions, so that what was intended was to

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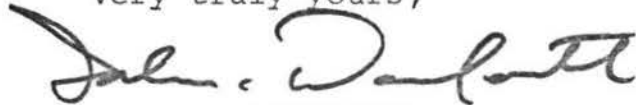
substitute the director of the Division of Welfare for the director of the Department. This would be within the authority of Section 26.540, where if the word "by" was intended, this would change the substantive meaning of Section 208.080. It would therefore, constitute more than a reassignment of functions and would not be authorized by Section 26.540.

In the rules of statutory construction the meaning of a statute may be plain though it contains mistakes in writing, grammar, spelling, punctuation, misnomers, misdescriptions, surplusage or omits words. State ex rel. Klein v. Hughes, 351 Mo. 651, 173 S.W.2d 1877. Furthermore, words omitted may be read into a statute to make the statute harmonize with reason and properly express the legislature's intent. State ex rel. and to use of Tadlock v. Mooneyham, 212 Mo.App. 573, 253 S.W. 1098.

Where the language leads to a manifest contradiction of the apparent purpose of the enactment, a construction may be adopted which will modify the meaning of the words. Glaser v. Rothschild, 221 Mo. 180, 120 S.W. 1. In State ex rel., Stinger v. Krueger, 280 Mo. 293, 217 S.W. 310, the Court read "and" into the statute in question in place of "or" to carry out the plain purpose of the statute and when to adopt the literal meaning would defeat the purpose or lead to an absurd result.

Accordingly, it is our opinion that paragraph 8 of Plan 2 should be read as "to" instead of "by".

Very truly yours,



JOHN C. DANFORTH
Attorney General