

GOVERNOR: (1) The Mental Health Commission, and
MENTAL HEALTH: not the Governor, has authority to ap-
point the director of the Department
of Mental Health, and (2) the Governor and the Mental Health Com-
mission are each authorized to remove the director of mental health.

OPINION NO. 215

June 12, 1974

Honorable Christopher S. Bond
Governor of Missouri
Executive Offices
State Capitol Building
Jefferson City, Missouri 65101



Dear Governor Bond:

This is in response to your request for an official opinion to the following questions:

- "1. Does the governor or the mental health commission appoint the director of the department of mental health?
- "2. Is the governor, or the mental health commission, authorized to remove the director of the department of mental health?"

Concerning your first question, Article IV, Section 17 of the Missouri Constitution, as adopted at special election on August 4, 1970, states, in part:

". . . The heads of all the executive departments shall be appointed by the governor, by and with the advice and consent of the senate.
. . ."

Article IV, Section 37(a) adopted at special election on August 8, 1972, states, in part:

"The department of mental health shall be in charge of a director who shall be appointed by the commission, as provided by law, and by and with the advice and consent of the senate.
. . ."

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Section 9.1 of C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly (hereinafter referred to as Senate Bill No. 1), states, in part:

"There is hereby created a department of mental health to be headed by a mental health commission who shall appoint a director, by and with the advice and consent of the senate.
. . ."

It is apparent that there are conflicting provisions in the Constitution concerning who appoints the Director of the Department of Mental Health. Initially, it should be stated that provisions of the Constitution which appear to conflict are deemed repugnant only when ". . . they relate to the same subject, are adopted for the same purpose, and cannot be enforced without substantial conflict. . . ." 16 C.J.S. Constitutional Law §24 p. 97. These requirements appear to be met in this situation.

The resolution of the question turns on rules of constitutional interpretation. Normally, where there is a specific provision, with a particular intent, that conflicts with a general provision, with a general intent, the specific provision will be treated as an exception, and shall receive a strict but reasonable interpretation. 16 C.J.S. Constitutional Law §25 p. 98. It is apparent that Article IV, Section 37(a) is a specific provision and Article IV, Section 17 is a more general provision.

Furthermore, Article IV, Section 37(a) was adopted more recently than Article IV, Section 17. 16 C.J.S. Constitutional Law §26 p. 99, states, in part:

". . . As the latest expression of the will of the people a clause in a constitutional amendment will prevail over a provision of the constitution or earlier amendment inconsistent therewith, since an amendment to the constitution becomes a part of the fundamental law, and its operation and effect cannot be limited or controlled by previous constitutions or laws that may be in conflict with it. . . ."

This rule has been adopted in Missouri. Moore v. Brown, 165 S.W.2d 657, 663 (Mo. Banc 1942); State ex rel. Board of Fund Commissioners v. Holman, 296 S.W.2d 482, 491 (Mo. Banc 1956); State ex rel. Lashly v. Becker, 235 S.W. 1017, 1020 (Mo. Banc 1921); State ex inf. McKittrick v. Bode, 113 S.W.2d 805 (Mo. Banc 1938).

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In light of these rules of interpretation, it is our view that the provisions of Article IV, Section 37(a) prevail over Article IV, Section 17.

Attorney General's Opinion No. 161 dated April 4, 1974, to Harold P. Robb, M.D. (copy enclosed) indicated our view that Section 9.1 of Senate Bill No. 1 was unconstitutional to the extent that it attempted to make the commission the head of the department. The opinion also held that such provision is severable. Therefore, it is our view that the provision of Section 9.1, which states that the commission shall appoint a director, is consistent with the Constitution.

Furthermore, Section 1.6(1) of Senate Bill No. 1 states, in part:

"The head of each department shall be appointed, as provided by the Constitution, by the governor with the advice and consent of the senate. . . ."

We believe that this provision may not be applied to the director of the Department of Mental Health for the reason stated above.

Concerning your second question, Article IV, Section 17 states, in part:

". . . All appointive officers may be removed by the governor . . ."

Section 1.6(1) of Senate Bill No. 1 states, in part:

". . . The head of each department shall serve at the pleasure of the governor unless otherwise provided by the Constitution or this act."

Section 9.1 of Senate Bill No. 1 states, in part:

". . . The director shall be the administrative head of the department and shall serve at the pleasure of the commission . . ."

Removal from office has been defined as ". . . a deprivation of office by the act of a competent superior officer acting within the scope of his authority. . . ." 67 C.J.S. Officer §59 pp. 240-241. It is, therefore, necessary to analyze the three above-quoted expressions of "authority."

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Concerning the Governor's authority to remove appointed officers, it has been the general rule that the power to remove from office is not inherent but must be vested by the Constitution in the executive. 16 C.J.S. Constitutional Law §168 p. 848. This has apparently been accomplished in Article IV, Section 17. The General Assembly has also granted the Governor this authority in Section 1.6(1) of Senate Bill No. 1.

Therefore, it is our view that the Governor is properly authorized to remove the director of mental health.

Concerning the Mental Health Commission's power to remove the director of mental health, the statute is clear that the director "serves at the pleasure" of the commission.

The question arises as to whether this provision of Senate Bill No. 1 conflicts with Article IV, Section 17. We think not. A statutory provision is not repugnant to a constitutional provision unless clearly so (see earlier discussion of "repugnance") and unless the two provisions cannot have concurrent operation. 16 C.J.S. Constitutional Law §43 p. 136.

We believe that the above-quoted provisions of the Constitution and Senate Bill No. 1 can have concurrent operation. Therefore, it is our view that the Governor and the Mental Health Commission are each authorized to remove the director of mental health.

CONCLUSION

It is the opinion of this office that (1) the Mental Health Commission, and not the Governor, has authority to appoint the director of the Department of Mental Health, and (2) the Governor and the Mental Health Commission are each authorized to remove the director of mental health.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Andrew Rothschild.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 161
4-4-74, Robb