

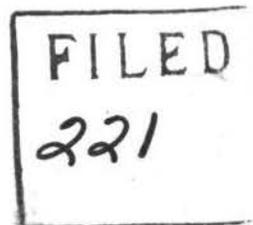
REORGANIZATION ACT:

Under the provisions of Senate Bill No. 1, 77th General Assembly, First Extraordinary Session, where a division is created by statute and an existing agency is transferred to it by "Type I" transfer, the department head has the power that he would if the agency were transferred by "Type I" transfer to the department except he may not abolish the division and he may not assign the function of the previously existing agency to another division in the department.

OPINION NO. 221

June 18, 1974

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



Dear Governor Bond:

This is in response to your question, as stated:

"In several sections of Senate Bill No. 1 (the Omnibus State Reorganization Act) the legislature has created a new division within a department, and has transferred an existing agency, or portion thereof, to this new division by "Type I" transfer. What authority do the relevant department heads have over divisions within departments, created by this fashion?"

Initially, our review of Senate Bill No. 1 (C.C.S.H.C.S.S. C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly) reveals several sections which expressly create divisions to which your general question is applicable. They are:

1. Sections 4.11 and 4.12 - Division of Commerce and Industrial Development,
2. Sections 8.5 and 8.6 - Division of Industrial Inspection,
3. Sections 9.5, 9.6 and 9.7 - Division of Mental Retardation and Developmental Disabilities,

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4. Section 11.11 - Division of Water Safety,
5. Section 13.7 - Division of Family Services,
6. Section 13.8 - Division of Veterans Affairs, and
7. Section 13.16 - Division of Youth Services.

In each of the above-listed sections of Senate Bill No. 1, the General Assembly has created a new division within a department and has transferred a former agency to the division by "Type I" transfer. There has not been included in these sections any expression concerning the relationship between the department head and the specific division (except, in most cases, the power to appoint the division head).

Section 1.7 (1) (a) of Senate Bill No. 1 defines a "Type I" transfer as follows:

"(a) Under this act a type I transfer is the transfer to the new department or division of all the authority, powers, duties, functions, records, personnel, property, matters pending and all other pertinent vestiges of the existing department, division, agency, board, commission, unit, or program to the director of the designated department or division for assimilation and assignment within the department or division as he shall determine, to provide maximum efficiency, economy of operation and optimum service. All rules, orders and related matter of such transferred operations shall be made under direction of the director of the new department."

Section 1.6 (2) states, in part:

"(2) Unless otherwise provided by this act, the head of each department is authorized to establish the internal organization of the department and allocate and reallocate duties and functions to promote economic and efficient administration and operation of the department. . . ."

The provisions of Section 1.7 (1) (a) do provide for a "Type I" transfer of an agency to a division. (The prevalent approach

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in the bill is to transfer an agency by "Type I" to a department). However, the provision states that:

". . . All rules, orders and related matter of such transferred operations shall be made under direction of the director of the new department."

This section, considered with Section 1.6 (2), shows that the legislature intended that the department head should have the same powers relating to these divisions, created by statute, as he would to a previously existing agency transferred by "Type I" to his department directly. However, we believe the legislature intended that the enumerated divisions be created and that they contain the functions of the previously existing agencies transferred to them. This would be one restriction on the normal exercise of power by a department head in assimilating an agency, or division, by a "Type I" transfer.

Therefore, we believe that while the relevant department head cannot abolish the specified division and may not assign the function of the specified agency to another division in the department he may otherwise consider that division as he would a division transferred to his department by a "Type I" transfer.

CONCLUSION

It is the opinion of this office that under the provisions of Senate Bill No. 1, 77th General Assembly, First Extraordinary Session, where a division is created by statute and an existing agency is transferred to it by "Type I" transfer, the department head has the power that he would if the agency were transferred by "Type I" transfer to the department except he may not abolish the division and he may not assign the function of the previously existing agency to another division in the department.

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

Very truly yours,



JOHN C. DANFORTH
Attorney General