

REORGANIZATION ACT:  
DEPARTMENT OF NATURAL RESOURCES:

(1) The positions of executive secretary of the Air Conservation Commission, Clean Water Commission, and Inter-Agency Council for Outdoor Recreation are abolished and the director of the Department of Natural Resources shall cause the policies of these boards to be executed and directors of staff shall be appointed by the director of the department to service these agencies; (2) there is no position comparable to "executive secretary" for the Soil and Water Districts Commission and the director of the department shall cause the policies of this commission to be executed and shall appoint a director of staff to service the commission; (3) the director of the department shall cause the policies of the Oil and Gas Council to be executed and shall appoint a state geologist who shall serve as director of staff to the council; (4) the position of director of the Land Reclamation Commission continues and the commission shall select such director who shall be the "director of staff"; and (5) none of the above positions are merit positions under Chapter 36, RSMo.

OPINION NO. 235

June 18, 1974

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



Dear Governor Bond:

This is in reply to your request for an opinion concerning the status of the chief executive officer for each of the various boards and commissions transferred pursuant to the "Omnibus State Reorganization Act of 1974" (Senate Bill No. 1, First Extraordinary Session, 77th General Assembly) by Type II transfer to the Department of Natural Resources. The boards and commissions in question are the Air Conservation Commission, Clean Water Commission, Soil and Water Districts Commission, State Oil and Gas Council, Land Reclamation Commission, and the Inter-Agency Council for Outdoor Recreation.

The general question is whether, for example, for the Air Conservation Commission there will continue to be a position of "executive secretary," as such, or whether this position is in effect abolished by Senate Bill No. 1. Also, you inquire as to the status of such position as a merit system position.

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Because the questions are common for the various boards and commissions and because the answers for one will generally typify the answers for all, we will for convenience first fully analyze the position of executive secretary for the Air Conservation Commission.

Section 203.040.4, RSMo 1973 Supp., of the Missouri Air Conservation Law, provides as follows:

"The commission shall appoint an executive secretary who shall act as its administrative agent and he shall be qualified, by education, training and experience, in technical matters in air contaminant control.  
. . ."

The executive secretary is, throughout the law and more particularly in Section 203.060, RSMo 1973 Supp., given certain powers and duties, including the right to issue orders, file complaints, and take similar official actions.

As stated above, the Air Conservation Commission has now been transferred by Type II transfer to the Department of Natural Resources. Section 10.3, Senate Bill No. 1, provides in part:

". . . The bodies hereby transferred shall retain all rule making and hearing powers allotted by law, . . ."

Then, subsection 1 of Section 10 of Senate Bill No. 1 provides, in part, as to the powers of the director of the Department of Natural Resources:

". . . The director shall administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources. The director shall coordinate and supervise all staff and other personnel assigned to the department. He shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, be subject to their decisions as to all substantive and procedural rules and his decisions shall be subject to appeal to the board or commission on request of the board or commission or by affected parties. . . ."

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Since under Chapter 203 the executive secretary now administers the air conservation program, it is obvious that the legislature intended that this function under reorganization be performed by the director of the department. Therefore, the position of "executive secretary" has been abolished and all the statutory functions of Chapter 203 are now to be performed by the director. In other words, for each instance where "executive secretary" is used in Chapter 203 it should now read "director of the department of natural resources."

It should be readily apparent, considering the number of boards and commissions and the important functions of the boards and commissions involved in the department, that the director would have great difficulty in regularly meeting with and administering personally to these boards and commissions. Therefore, the legislature provided as follows:

"The director shall appoint directors of staff to service each of the policy making boards or commissions assigned to the department. Each director of staff shall be qualified by education, training and experience in the technical matters of the board to which he is assigned and his appointment shall be approved by the board to which he is assigned and he shall be removed or reassigned on their request in writing to the director of the department. All other employees of the department and of each board and commission assigned to the department shall be appointed by the director of the department in accord with chapter 36 RSMo and shall be assigned and may be reassigned as required by the director of the department in such a manner as to provide optimum service, efficiency and economy." Section 10.2, Senate Bill No. 1.

This function further shows the intent that the position of "executive secretary" has been abolished, for to hold otherwise would suggest two positions, that of "executive secretary" and that of "director of staff," which positions would virtually duplicate each other. Therefore, the director will carry out his statutory duties to the Air Conservation Commission primarily through his director of staff. Of course, he will still have to personally take all formal actions under Chapter 203, such as the issuance of orders.

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We do note the language in Section 1.7(1)(b), Senate Bill No. 1, defining a Type II transfer, where it is stated:

"Under this act a type II transfer is the transfer of a department, division, agency, board, commission, unit, or program to the new department in its entirety with all the powers, duties, functions, records, personnel, property, matters pending, and all other pertinent vestiges retained by the department, division, agency, board, commission, unit or program transferred subject to supervision by the director of the department. . . ."

This language is suggestive that the Air Conservation Commission would retain the function of employing personnel including the appointment of an executive secretary. However, the definition of a Type II transfer then continues as follows:

". . . Supervision by the director of the department under a type II transfer shall include, but shall be limited to: budgeting and reporting under subdivisions (4) and (5) of subsection 6 of this section; to abolishment of positions, other than division, agency, unit or program heads specified by statute; to the employment and discharge of division directors; to the employment and discharge of employees, except as otherwise provided in this act; to allocation and reallocation of duties, functions and personnel; and to supervision of equipment utilization, space utilization, procurement of supplies and services to promote economic and efficient administration and operation of the department and of each agency within the department. Supervision by the director of the department under a type II transfer shall not extend to substantive matters relative to policies, regulative functions or appeals from decisions of the transferred department, division, agency, board, commission, unit or program, unless specifically provided by law. . . ."

It is obvious from reading this entire definition that the intent is that on the date of transfer all personnel and property are transferred to the new department with personnel and funding matters under the direct supervision of the director. We find

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this definition consistent with Section 10 and our conclusion above, in that the Commission still sets all air conservation policy. We find nothing in this section which conflicts with our view that Section 10 has abolished the position of "executive secretary."

Next then is the merit system question which has been prompted by Section 1.6(8), Senate Bill No. 1, and the fact that the position of "executive secretary" is a merit system position. Section 1.6(8) provides:

"Nothing in this act shall be construed so as to remove any state agency or unit thereof or any position of employment from coverage under the provisions of the merit system law if the agency or position was covered by that law on the effective date of this act."

Since the "position" of "executive secretary" was a merit system position, it follows that under this provision such "position" would continue as a merit system position. That is, of course, if there continues to be such a position. However, since this position has been abolished, then under the plain meaning of Section 1.6(8) there is obviously no longer such a merit position. And, we note that the director of staff appointed to the Air Conservation Commission is not a merit system employee. Section 10.2.

We have examined the Clean Water Law, Chapter 204, RSMo, which provides for an executive secretary in virtually the same manner as the Air Conservation Law. Accordingly, we also hold that this position has been abolished. The same answer also applies on the merit system question.

The Soil and Water Conservation Districts Law, Chapter 278, RSMo, does not provide for a position comparable to that of "executive secretary," but merely provides the commission may employ such assistants as it may require. Accordingly, the above analysis is unnecessary since there is no such position in question as to whether it has been abolished. Therefore, the director of the Department of Natural Resources shall accordingly carry out the policies of the commission through the appointment of a director of staff, as provided in Section 10, Senate Bill No. 1.

The State Oil and Gas Law, Chapter 259, RSMo, provides for an administrator for the council who is the state geologist (Section 259.030.2) and who is also a member of the council. Section 259.010. The powers, duties, and functions of the state geologist

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are transferred by Type I transfer to the department. However, here there is a specific provision as to how the director of the department will carry out the powers, duties, and functions of the state geologist. Section 10.5, Senate Bill No. 1, provides in part:

". . . The director of the department shall appoint a state geologist who shall have the duties to supervise and coordinate the work formerly done by the departments or authorities abolished by this subsection, and shall provide staff services for the state oil and gas council."

Accordingly, it is our view that the director of the department must appoint a state geologist who shall then serve as director of staff to the State Oil and Gas Council. Since this position has not previously been a merit position, it would not now be a merit position.

The Land Reclamation Law, Section 444.500 et seq., RSMo, provides for a "director of the commission," which position is comparable to that of "executive secretary." However, the legislature has made specific provision as to the powers of this commission which are different from any other Type II commission in the department. Section 10.6, Senate Bill No. 1, provides in part:

". . . All necessary personnel required by the commission shall be selected, employed and discharged by the commission. The director of the department shall not have the authority to abolish positions."

The legislature by using broad language that "all necessary personnel required . . . shall be selected" as well as "employed" clearly intended that there continue to be a director who is appointed by the commission. In addition to this position of director selected by the commission, the commission also has the power to employ all other personnel. Further, since this position of director has not previously been a merit position, it would not now be a merit position.

Finally, Section 288.040.2, RSMo, provides for an executive secretary for the State Inter-Agency Council for Outdoor Recreation. Subsection 8(2) of Section 10 specifically provides that the "office of executive secretary to the council is abolished." Therefore, the director of the department should appoint a director of staff to service the council. Accordingly, this position would also not be a merit position.

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CONCLUSION

It is the opinion of this office that: (1) the positions of executive secretary of the Air Conservation Commission, Clean Water Commission, and Inter-Agency Council for Outdoor Recreation are abolished and the Director of the Department of Natural Resources shall cause the policies of these boards to be executed and directors of staff shall be appointed by the director of the department to service these agencies; (2) there is no position comparable to "executive secretary" for the Soil and Water Districts Commission and the director of the department shall cause the policies of this commission to be executed and shall appoint a director of staff to service the commission; (3) the director of the department shall cause the policies of the Oil and Gas Council to be executed and shall appoint a state geologist who shall serve as director of staff to the council; (4) the position of director of the Land Reclamation Commission continues and the commission shall select such director who shall be the "director of staff"; and (5) none of the above positions are merit positions under Chapter 36, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH  
Attorney General