

GOVERNOR:
MERIT SYSTEM:
REORGANIZATION ACT:
DIVISION OF ADMINISTRATION:
COMMISSIONER OF ADMINISTRATION:

Division heads who are provided for in departmental plans pursuant to Section 1.6(2) of S.B. No. 1, First Extraordinary Session, 77th General Assembly, are division heads who are to be ap-

pointed by the department director under Section 1.6(6) of S.B. No. 1, and therefore such appointments come under the exemption of subsection 1(1) of Section 36.030, H.B. No. 8, First Extraordinary Session, 77th General Assembly, and are not covered by provisions of the merit system law, subject, of course, to Article IV, Section 19, Constitution of Missouri.

OPINION NO. 37

February 5, 1975

Mr. Mark Edelman
Deputy Commissioner of Administration
Room 123, State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Edelman:

This opinion is in response to your question asking whether the exemption from the merit system provisions relating to heads of divisions of service includes heads of divisions of service established by department directors, or only applies to heads of divisions of service that are explicitly provided for by statute.

Subsection 1(1) of Section 36.030 (H.C.S.H.B. No. 8, First Extraordinary Session, 77th General Assembly), which contains exemptions from the state merit system, provides in part as follows:

". . . the following offices and positions . . . are not subject to this law [merit system] and may be filled without regard to its provisions:

(1) Other provisions of the law to the contrary notwithstanding, members of boards and commissions and heads of divisions of service having specified terms of office or required by law to be appointed by the governor or by the director of a department of the executive branch of government, except the personnel director;" (Emphasis added)

Mr. Mark Edelman

Your question is simply the meaning of the provision in Section 36.030 excepting ". . . heads of divisions of service . . . required by law to be appointed . . . by the director of a department . . ." It is obvious, of course, that if there is a statute which creates a division within a department and directs that the division head be appointed by the director of the department, such appointment is exempt from the operation of the merit system law. Your question is whether this also applies to directors of divisions which are created by heads of departments as authorized by Section 1.6(2) of the "Omnibus State Reorganization Act of 1974," C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly, known hereafter as S.B. No. 1. In such provision, the head of each department is authorized to establish the internal organization of the department and in doing so shall develop a departmental plan to be approved by the Governor in accordance with the transfer by type provided in S.B. No. 1. This plan as approved is then filed with the Secretary of State and with the Commissioner of Administration and the Revisor of Statutes. Authority is given for the organization of the department into divisions, and therefore for the creation of divisions within the department.

In such situations, Section 1.6(6) of S.B. No. 1 provides in part:

". . . Subject to the provisions of chapter 36, RSMo, where they apply, the department director shall appoint all division heads unless otherwise provided in this act and such division heads and the deputy director of the department shall serve at the pleasure of the director of the department or unless otherwise provided by this act."

It is our opinion that all division heads provided either by statute or in the departmental plan are then to be appointed by the director of the department, unless specific provisions in S.B. No. 1 provide for a different manner of appointment for any specific division head. Accordingly, it is our view that such division directors are those directors ". . . required by law to be appointed . . . by the director of a department . . ." under subsection 1(1) of Section 36.030. In other words, the only requirement of this provision is that if there is a position of division head, and if it is required by law that such appointment be made by the Governor or the director of the department, such position is then exempt from the merit system. Finally, we note that

Mr. Mark Edelman

such general exemption provisions are, of course, subject to the provisions of Article IV, Section 19, Constitution of Missouri.

CONCLUSION

It is the opinion of this office that division heads who are provided for in departmental plans pursuant to Section 1.6(2) of S.B. No. 1, First Extraordinary Session, 77th General Assembly, are division heads who are to be appointed by the department director under Section 1.6(6) of S.B. No. 1, and therefore such appointments come under the exemption of subsection 1(1) of Section 36.030, H.B. No. 8, First Extraordinary Session, 77th General Assembly, and are not covered by provisions of the merit system law, subject, of course, to Article IV, Section 19, Constitution of Missouri.

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

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General