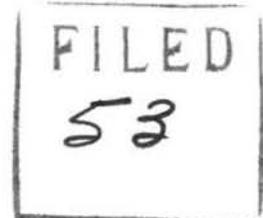


COMPENSATION: (1) Department heads have authority under Senate Bill No. 1, 77th General Assembly, to set the salary of division and other administrative positions subject to appropriations therefor. (2) The salary of the Adjutant General established by the first departmental plan filed before June 30, 1974, providing for a salary of \$18,000.00 per year for the Adjutant General, constitutes the salary which the Adjutant General may be paid at present. The salary may be changed by a subsequent departmental plan.

OPINION NO. 53

March 18, 1975



Mr. Michael D. Garrett, Director  
Department of Public Safety  
Post Office Box 749  
Jefferson City, Missouri 65101

Dear Mr. Garrett:

This is in answer to your opinion request reading as follows:

"Do I have the authority, as Director of the Department of Public Safety, to increase the salary of the Adjutant General? If not, what is the salary level for the Adjutant General for fiscal year 1975?"

Section 41.140, RSMo Supp. 1973, provides in part, as follows:

"2. The adjutant general shall have the rank designated by the governor and shall receive eighteen thousand dollars per annum, . . ."

Such section purports to set the salary of the Adjutant General and the question is whether or not you are bound by such statutory provision or whether you have been given authority to set the salary.

Section 11.10 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, provides as follows:

Mr. Michael D. Garrett

"10. The office of adjutant general and the state militia are assigned to the department of public safety; provided however nothing herein shall be construed to interfere with the powers and duties of the governor as provided in Article IV, Section 6 of the Constitution of the state of Missouri or chapter 41, RSMo."

Since the office of Adjutant General was not transferred by a type I, II or III transfer to the Department of Public Safety, such transfer constitutes a "specific type" transfer as defined in Section 1.7(1)(d) of Senate Bill No. 1. A "specific type" transfer is defined therein as one other than a type I, II or III transfer. Senate Bill No. 1 does not specifically provide what the effect of a "specific type" transfer will be. However, a "specific type" transfer does undoubtedly place within the Department of Public Safety the office of the Adjutant General.

Section 1.6(2) of Senate Bill No. 1, providing for departmental plans, provides in part, as follows:

". . . The plan shall provide for the level of compensation for division and other administrative positions, subject to appropriations therefor. . . ."

Section 1.6(2) also provides that the head of each department is 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. It is our view that in carrying out this admonition of the legislature the above quoted provision authorizes the head of each department in the plans filed, the first of which was to be filed before June 30, 1974, to determine the level of compensation for division and other administrative positions subject to appropriations therefor.

The setting of the salary of the Adjutant General in no way interferes with the power and duties of the Governor provided in Section 6 of Article IV of the Constitution, which provides that the Governor shall be commander in chief of the militia, or the power granted the Governor in Chapter 41, RSMo, which gives the Governor general control of the militia but does not authorize the Governor to set the salary of the Adjutant General.

It is our view that authority to set salaries of division heads and administrative positions is given to department heads

Mr. Michael D. Garrett

by Section 1.6(2) of Senate Bill No. 1, and that any salaries that are set by department heads for division and other administrative positions will prevail over any statutory provisions enacted and effective prior to the effective date of the Reorganization Bill.

We note that the departmental plan submitted by the director of the Department of Public Safety before June 30, 1974, provided for a salary of \$18,000.00 for the Adjutant General. Section 4.115 of C.C.S.H.B. No. 1004, Second Regular Session of the 77th General Assembly, provides an appropriation for the salary of the Adjutant General of \$20,000.00.

Generally, the courts of Missouri and this office in numerous official opinions have consistently held that any portion of an appropriation bill which in effect would constitute general legislation is in violation of Article III, Section 23 of the Missouri Constitution. See State ex rel. Davis v. Smith, 75 S.W.2d 828 (Mo.Banc 1934); State ex rel. Gaines v. Canada, 113 S.W.2d 783 (Mo.Banc 1937), reversed on other grounds 305 U.S. 337; and particularly State ex rel. Hueller v. Thompson, 289 S.W. 338 (Mo.Banc 1926). It appears therefore that the General Assembly could not by an appropriation act change the salary set in the first departmental plan of the Department of Public Safety.

However, as pointed out above, the director of the Department of Public Safety does have the power in subsequent departmental plans to set a different salary for the Adjutant General subject to appropriations therefor.

#### CONCLUSION

It is the opinion of this office that (1) department heads have authority under Senate Bill No. 1 of the 77th General Assembly to set the salary of division and other administrative positions subject to appropriations therefor. (2) The salary of the Adjutant General established by the first departmental plan filed before June 30, 1974, providing for a salary of \$18,000.00 per year for the Adjutant General, constitutes the salary which the Adjutant General may be paid at present. The salary may be changed by a subsequent departmental plan.

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Very truly yours,



JOHN C. DANFORTH  
Attorney General