

February 6, 1975

OPINION LETTER NO. 80  
Answer by letter-Nowotny



Mr. Lawrence Graham, Director  
Missouri Department of Social Services  
Broadway State Office Building  
Jefferson City, Missouri 65101

Dear Mr. Graham:

This is in answer to your request for an opinion in which you ask whether the Director of the Department of Social Services may, under the Omnibus Reorganization Act of 1974, C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, Seventy-Seventh General Assembly, create divisions and staff such divisions, and, if so, whether the exemptions to Chapter 36, RSMo, as stated in Section 13.1 of S.B. 1, apply to those divisions so created.

Attached is a copy of Opinion No. 37 dated February 5, 1975, to Mark Edelman, in which we stated that authority is given under Section 1.6(2) of S.B. 1 for the organization of departments into divisions, and therefore for the creation of divisions within the department. Therefore, it is our view that the Director of the Department of Social Services can create divisions and staff such divisions.

As to your question relating to the merit system law, Chapter 36, RSMo, we draw your attention to the remainder of the discussion in Opinion No. 37 holding that heads of such divisions are exempt from the merit system law pursuant to Section 36.030, H.B. No. 8, First Extraordinary Session, Seventy-Seventh General Assembly. The basis of the holding was that the pertinent language of Section 36.030 exempted

heads of divisions which are required by law to be appointed by the director of a department. Since Section 1.6(6) of S.B. No. 1 provides that all division heads, including those divisions created in departmental plans, are to be appointed by the director, our opinion thus held that such positions are exempt under Section 36.030.

Also enclosed is our Opinion No. 220, dated June 11, 1974, to the Honorable Christopher S. Bond, in which we held that the provisions of Section 13.1 of S.B. 1, exempt from the requirements of Chapter 36 the positions listed therein. The pertinent language in Section 13.1 provides as follows:

" . . . All employees of the department of social services shall be covered by the provisions of chapter 36, RSMo, except the director of the department and his secretary, all division directors and their secretaries, and no more than three additional positions in each division which may be designated by the division director."

The question then is whether the use of the term "division" in Section 13.1 encompasses divisions created by departmental plans as discussed in Opinion No. 37. It is our opinion that the reasoning of Opinion No. 37 is equally applicable here and that the intent of Section 13.1 is to provide exemptions for all divisions of the department, including divisions created by departmental plan.

Yours very truly,

JOHN C. DANFORTH  
Attorney General

Enclosures: Opinion No. 220  
6-11-74, Bond

Opinion No. 37  
2-5-75, Edelman