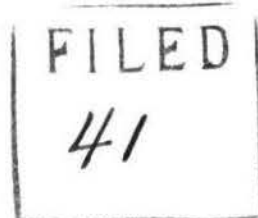


REORGANIZATION ACT:
DEPARTMENT OF REVENUE:

OPINION NO. 41

January 7, 1977

Honorable George Lehr
State Auditor
Capitol Building
Jefferson City, Missouri



Dear Mr. Lehr:

This is in response to your request for an official opinion of this office concerning the question of whether a Deputy Director of Revenue, appointed pursuant to Section 1.6(6) of the Omnibus State Reorganization Act, Appendix B, RSMo Cum. Supp. 1975, can hold such office and legally exercise all powers of the Director of Revenue in the event the Director of Revenue should resign. You have stated that the present Director of Revenue is resigning his office effective January 10, 1977, and it may be some period of time before a new Director of Revenue is appointed and confirmed and in order to assure that all the legal functions of the Director of Revenue are carried out, it is necessary to ascertain whether the Deputy Director appointed by such resigning Director of Revenue has full legal authority to act as Director of Revenue.

We believe that Section 1.6(6) of the Omnibus Reorganization Act is fully dispositive of your question and that such Deputy Director does have full authority to act upon resignation of the present Director of Revenue. That provision provides in part:

"The director of each department may designate by written order filed with the governor and president pro-tem of the senate a deputy director of the department, to act for and exercise the powers of the director only during the department director's absence for official business, vacation, illness, death, resignation or incapacity. When a deputy director acts as director of the department he shall receive a salary at the level provided for the director of the department when he has acted in such a capacity for longer than thirty days. A deputy director, however, shall not exercise the powers of the director for more than six consecutive months. . . ." (Emphasis supplied)

Thus, it is seen that the legislature has directly anticipated

Honorable George Lehr

a situation such as the one presented here. We are advised that the present Director of Revenue has designated by written order, filed with the Governor and President Pro Tem of the Senate, a Deputy Director of the Department. That being the case, upon resignation by the Director of Revenue, that Deputy has full authority to act as Director of Revenue for a period not to exceed six consecutive months, or a shorter period should a new Director of Revenue be appointed and confirmed pursuant to Article IV, Section 51, Constitution of Missouri. Thus, if a new Director of Revenue is appointed while the legislature is in session, the new Director would take office upon receiving the advice and consent of the Senate.

CONCLUSION

It is the opinion of this office that a Deputy Director of Revenue, appointed pursuant to Section 1.6(6) of the Omnibus State Reorganization Act, Appendix B, RSMo Cum. Supp. 1975, can hold such office and legally exercise all powers of the Director of Revenue for a period not to exceed six consecutive months in the event the Director of Revenue should resign.

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

Very truly yours,



JOHN ASHCROFT
Attorney General