LABOR: Acceptance of Wagner-Peyser Law by Missouri does not require all of the Labor Department to come under federal supervision

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Mrs. Mary Edna Cruzen, Director,
Missouri State Employment Service,
Jefferson City, Missouri.

Dear Mrs. Cruzen:

This will acknowledge receipt of your inquiry which is as follows:

> "Does the acceptance of the Wagner-Peyser law by the State of Missouri have the effect of requiring that the administration of all public employment agencies, including the National Reemployment Service, beiin the control of the state through the Labor Commissioner."

Senate Bill No. 510, known as the Wagner-Peyser Act, Public No. 30, 73d Congress, 48 Stat. 113, among other things, provides:

> "Sec. 3. (a) It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, to maintain a public employment service for the District of Columbia and, in the manner hereinafter provided, to assist in establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in which

> there shall be located a veterans' employment service. The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States."

Section 4 provides that in order for a state to obtain the benefits of the appropriation carried in the act, the state

> "shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act."

Section 5 provides, inter alia:

> "No payment shall be made in any year out of the amount of such appropriations apportioned to any State until an equal sum has been appropriated or otherwise made available for that year by the State, or by any agency thereof, including appropriations made by local subdivisions, for the purpose of maintaining public employment offices as a part of a State-controlled system of public employment offices."

Section 7 provides that the federal director, under the Act, shall have authority to inquire and ascertain whether the State has accepted the provisions of the Act and "designated or authorized the creation of an agency to cooperate", and what amounts have been made available by the "state and by any agency thereof, including appropriations made by local subdivisions, in compliance with the provisions of section 5 of this Act."

Section 8 provides that any State desiring to receive the benefits of the Act "shall, by the agency designated to cooperate with the United States Employment Service, submit to the director" certain detailed plans under the provisions of the Act, and that if the particular State has a board, department, etc., charged with the administration of laws for vocational rehabilitation, etc., such plans "shall include provision for cooperation between such board, department, or agency and the agency designated to cooperate with the United States Employment Service under this Act."

Section 9 provides that the State agency cooperating with the United States Employment Service shall make reports thereto as may be prescribed by the federal director. It further provides that it shall be the duty of the said director to "ascertain whether the system of public employment offices maintained in each State is conducted in accordance with the rules and regulations and the standards of efficiency prescribed by the director", etc., and that the director may revoke any further certificate on his determination that the cooperating State agency has not properly expended the moneys appropriated by either the federal government or the state and local communities under the Act.

Section 12 provides that

> "The director, with the approval of the Secretary of Labor, is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act."

By the provisions of House Bill No. 54, which has been finally passed and signed by the Governor (without emergency clause), Missouri accepted the provisions of said federal Act.

Section 13187 thereof says:

> " 'The commissioner of labor and industrial inspection shall organize and establish in all cities in Missouri' of a certain size, and in such other cities, towns and villages 'as he may deem necessary, a free public employment bureau', etc."

We have set out somewhat in extenso the provisions of the federal Act establishing a national employment system, and it may be observed from its provisions that it is entirely consistent with the construction of its being only a part of the official machinery of the labor department, which works in conjunction with the State labor department insofar as its provisions go.

It nowhere states that all of the operations of the labor department of a State shall be under and administered by the State agency created to administer the provisions of the federal Act.

In fact, in Section 5 it states that certain things are to be done "as a part of the State-controlled system."

In Section 7 said Act provides that the federal director shall inquire and ascertain whether the State has "designated or authorized the creation of an agency to cooperate."

Section 9 speaks of the State agency cooperating with the federal agency as to certain things.

Under the provisions of Section 12 of the federal Act, the federal director, with the approval of the Secretary of Labor, is authorized to make rules and regulations that may be necessary to carry out the provisions of the Act.

Under that power so conferred, we are inclined to think that said authorities could promulgate a ruling requiring that the administration of all public employment agencies be in control of the State through the labor commissioner as a condition precedent to the granting or allocation of the federal moneys to this State under the Act.

Repeals by implication are not favored and courts, if possible, will construe prior and subsequent related acts to make both effective. State ex rel. Turner v. Penman, 282 S. W. 498, 220 Mo. App. 193.

If the federal Act in terms provided that the administration of all public employment agencies of the State should be under control of the state labor commissioner, it would be open to serious objections as going beyond the power of the federal government.

We think that said Act makes no attempt to do so, but merely provides, as it appropriately may, that if the particular State is going to be permitted to share in the federal moneys so appropriated, it shall come within the provisions of the Act, shall accept the provisions thereof, etc., and if it fails to do that, then the federal money will be withheld from such State.

The passage of the law by the State of Missouri known as House Bill No. 54 constitutes the State Department of Labor and Industrial Inspection the state agency of Missouri for the purpose of administering in conjunction with the federal officials the national reemployment Act.

CONCLUSION.

We are of the opinion that the acceptance by the State of Missouri of the provisions of the Wagner-Peyser Law does not have the effect of requiring that the administration of all public employment agencies shall be under the control of the State through the State Labor Commissioner.

Yours very truly,

DRAKE WATSON,
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
Acting Attorney General

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