

PENITENTIARY : Employees of State Penitentiary paid in accordance with State Merit System Act.  
MERIT SYSTEM :

February 26, 1949

FILED

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*Copy to  
Whitcomb  
Turner*

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Honorable J. E. Sanders  
Representative of Madison County  
Missouri House of Representatives  
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"Does the provision in the Revised Statutes of Missouri, 1939, Section 9039, which provides that 'All turnkeys and guards shall receive for their services the sum of one hundred thirty-five dollars per month \* \* \*' limit the amount of compensation the guards may receive under the State Merit System, Laws of Missouri, 1945, pages 1157 to 1182 to \$135.00 per month?"

Section 9039, R.S. Mo. 1939, provides for the appointment of turnkeys and guards for the State Penitentiary, and further provides that:

"\* \* \*All turnkeys and guards shall receive for their services the sum of one hundred thirty-five dollars per month \* \* \* ."

The salary mentioned in the above quoted statute was fixed by the Legislature in 1927 (Laws of Missouri, 1927, page 128). The Constitution of Missouri, 1945, included for the first time in a Constitution of this State a provision for a merit system for certain state departments and divisions. Section 19, Article IV of the Constitution provides, in part, as follows:

"\* \* \* All employees in the state ele-  
mosynary and penal institutions, and  
other state employees as provided by  
law, shall be selected on the basis  
of merit, ascertained as nearly as  
practicable by competitive examina-  
tions; \* \* \* ."

The 63rd General Assembly in 1945, in carrying out the mandate of the Constitution, enacted what is known as the State Merit System Act, Laws of Missouri, 1945, page 1157. This act applies to all offices, positions and employees of the State Department of Corrections of which the State Penitentiary is a part. The act contains forty-seven sections and sets up a complete "system of personnel administration" which "shall govern the appointments, promotions, transfers, lay-offs, removal, and discipline of certain employees and other incidents of state employment." (Section 2, Laws of Missouri, 1945, page 1158). The act further provides that certain executive offices and positions "are hereby exempted from the operation of this act and may be filled without regard to those provisions hereof which relate to the selection, appointment, pay, tenure and removal of persons employed in such agencies:" (underscoring ours.)

Sub-section (8) of Section 2 of the law provides as follows:

"All positions and appointments in divisions of the service subject to this act which have been heretofore required to be filled upon the basis of merit and fitness; provided, however, that one year after this act becomes effective this exemption shall cease and determine and thereafter the selection, appointment, pay, tenure and removal of persons to or from all such positions shall be governed by the provisions of this act; \* \* \* ."  
(Underscoring ours.)

A reading of the above quotation from Section 2 of the State Merit System Act discloses that it was the

intent and purpose of the Legislature that the pay of all persons covered by the law would be determined and fixed according to the provisions of the law.

Section 15 of the act sets up the pay plan for the officers and employees and provides as follows:

"After consultation with appointing authorities and the State fiscal officers, and after a public hearing, the Director shall prepare and recommend to the Board a pay plan for all classes subject to this act. Such pay plan shall include for each class of positions, a minimum and a maximum rate, and such intermediate rates as the Director considers necessary or equitable. In establishing such rates, the Director shall give consideration to the experience in recruiting for positions in the State service, the rates of pay prevailing in the locality for the services performed, and for comparable services in public and private employment, living costs, maintenance, or other benefits received by employees, and the financial condition and policies of the State. Such pay plan shall take effect when approved by the Board and each employee appointed to a position subject hereto after the adoption of the pay plan shall be paid at one of the rates set forth in the pay plan for the class of positions in which he is employed. The pay plan shall also be used as the basis for preparing budget estimates for submission to the legislature in so far as such budget estimates concern payment for services performed in positions subject hereto. Amendments to the pay plan may be recommended by the Director from time to

Honorable J. E. Sanders. -4-

time as circumstances require and such amendments shall take effect when approved by the Board. The conditions under which employees may be appointed at a rate above the minimum provided for the class, or advance from one rate to another within the rates applicable to their positions, shall be determined by the regulations."

It is a rule of statutory construction that where a later act covers the whole subject of earlier acts, embraces new provisions, and plainly shows that it was intended, not only as a substitute for the earlier acts, but to cover the whole subject then considered by the legislature, and to prescribe the only rules in respect thereto, it operates as a repeal of all former statutes relating to such subject matter. (59 C.J. 919; Meriwether vs. Love, 167 Mo. 514, 67 S.W. 250.)

Applying the above stated rule to the statutes in question we believe it is apparent that the General Assembly in enacting the State Merit System Act intended to cover the whole subject of pay and, therefore, repealed by implication all previous statutes which provide the amount of salary to be paid officers and employees of the departments included under the State Merit System Act.

#### CONCLUSION

It is, therefore, the opinion of this department that Section 9039, R.S. Mo. 1939, which sets the salary of the turnkeys and guards at the State Penitentiary at one hundred thirty-five dollars per month has been repealed by the State Merit System Act, Laws of Missouri, 1945, page 1157, and turnkeys and guards must be paid in accordance with the provisions of said State Merit System Act.

Respectfully submitted,

APPROVED:

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Assistant Attorney General

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