

SOCIAL SECURITY COMMISSION: Section 8, Article VII, Constitution, 1945, applies to officers and not employees.



May 15, 1946

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State Social Security Commission
Jefferson City, Missouri

Attention: Mr. Proctor N. Carter

Gentlemen:

This will acknowledge receipt of your request for an official opinion, which letter reads:

"Senate Bill 349, recently passed by the General Assembly, establishes a State Department of Public Health and Welfare. In Section 7 of this bill it is provided that:

"All employees of the department of public health and welfare shall be persons of good character and integrity and citizens of this state for at least two years next before taking the examination. * * *

"The Constitution of Missouri, 1945, Article VII, Section 8, provides as follows:

"No person shall be elected or appointed to any civil or military office in this state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment, except that the residence in this state shall not be necessary in cases of appointment to administrative positions requiring technical or specialized skill or knowledge." (Underscoring ours)"

"It is my understanding that the above constitutional provision is substantially the same as the previous provision on this subject with the exception of the new matter, or addition, as underscored above.

"As I have previously advised you, we have found it increasingly difficult to recruit, hire and retain professionally trained social workers to fill certain key positions in our organization. I refer only to positions in this agency which require graduate training in recognized and accredited schools of social work. These positions, we consider to be of a technical nature requiring specialized knowledge.

"Question:

"(1) Does the new matter or exception in Article VII, Section 8, Constitution of Missouri 1945, relate only to, and apply to, public officers, or does it apply to any person appointed to an administrative position requiring technical or specialized skill or knowledge?"

Section 10, Article VIII, of the Constitution of 1875 reads:

"No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment."

Section 8 of Article VII of the Constitution of 1945, practically follows the language used in the foregoing Constitutional amendment and adds thereto that part underscored as hereinafter shown.

"No person shall be elected or appointed to any civil or military office in this state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment, except that the residence in this state shall not be necessary in cases of appointment to administrative positions requiring technical or specialized skill or knowledge." (Under-scoring ours)

Under Section 10, Article VIII, supra, the decisions all hold that said provision pertains solely to officers and not employees.

See Kirby v. Nolte, 164 S. W. (2d) 1, l.c. 9 and 10 wherein the court held that the director of personnel in St. Louis was an officer and not an employee and, therefore, comes within the provision of Section 10, Article VIII, supra, prohibiting officers from being appointed unless they have resided in this state at least one year immediately preceding their appointment.

The question now is, does the underscored portion of Section 8, Article VII, supra, apply solely to officers or does it apply likewise to employees? There is a well established rule of statutory construction that a statute should be construed so as to ascertain and give effect to the legislative intention expressed therein. (See Wentz v. Price Candy Co., 175 S. W. (2d) 852, 352 Mo. 1, also American Bridge Co. v. Smith 179 S. W. (2d) 12, 352 Mo. 616). The courts have also ruled that construction applicable to statutes also applies to the construction of Constitutions. (See State ex rel. Buchanan County v. Emil, 146 S.W. 783, 242 Mo. 293). Also the courts have held that members of constitutional conventions are presumed to have known of previous construction given former constitutional provisions by the Supreme Court and that in adopting, in a later Constitution, words and texts of another which has been construed by a court of last resort is presumed, in the absence of contrary intention, to have been done to give the adopted words their adjudicated meaning. In Ludlow-Saylor Wire Co. v. Wollbrinck, 205 S. W. 196, 275 Mo. 339, l.c. 355, the court said:

" * * * The rule is firmly settled that the adoption in a later constitution of the words and context of another, which had been construed by a court of last resort, is presumed (in the absence of a contrary intention) to have been done to give the adopted words their adjudicated meaning. (6 R. C. L., p. 54, sec. 49, and cases cited.) * * *"

Under general rules of statutory construction the underscored portion of Section 8, Article VII, Constitution of 1945, refers back to the subject, which is, appointed and elected officers, since the first part of said constitutional provision refers solely to the appointment and election of officers. The underscored part of said constitutional provision merely provides that the residence requirement (not citizenship) shall not be necessary in case of appointment (not elected) to administrative position requiring technical or specialized skill or knowledge. No doubt the delegates at the constitutional convention had in mind the decision rendered by the Supreme Court in State ex inf. v. Bode, 342 Mo. 162, 113 S. W. (2d) 805, wherein the Supreme Court held that Bode was an

officer but that he was not required to have resided in the state one year preceding his appointment, since his appointment was controlled by a later constitutional amendment (Section 16, Article XIV, Constitution of Mo.) which created the Conservation Commission and which left the appointment of Bode, the director, to the State Conservation Commission.

Position has often been defined to be analagous to office. In *Frazier v. Elmore*, 173 S. W. (2d) 563, l.c. 565, 180 Tenn. 232, the court said:

" * * * Webster defines 'office' as an 'assigned duty or function.' Synonyms are post, appointment, situation, place, position; and 'office' commonly suggests a position of (especially public) trust or authority.' Bouvier defines 'office' as 'a right to exercise a public function or employment, and to take the fees and emoluments belonging to it'; again, 'a public charge or employment.' 2 Bouv. Law Dict., Rawles Third Revision, p. 2401. The opinion of this Court in *Jones, Purvis & Co. v. Hobbs*, 63 Tenn. 113, at page 120, quotes Blackstone's definition of office as 'a right to exercise a public or private employment, and to take the fees and emoluments thereto belonging.'"

See also *Risley v. Board of Civil Service Commissioners of City of Los Angeles*, 140 P. (2) 167, 169, 60 Cal. App. (2) 32.

CONCLUSION

It is, therefore, the opinion of this department that the exception in Section 8, Article VII, Constitution of 1945, applies only to persons appointed or elected to some civil or military office and does not apply to employees. That had it been the intention of the framers of said constitutional provision to have same apply to employees as well as officers it would have been an easy matter for them to have included such a provision in clear and unambiguous terms.

Respectfully submitted,

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APPROVED:

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