MERIT SYSTEM:) 1. Notice of dismissal must be dated at least prior
) to the effective date of the dismissal.
) 2. Reason for dismissal must be sufficiently explicit
NOTICE:) that employee is able to explain and defend charges.

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FILED
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Honorable Ralph J. Turner
Director, Personnel Division
Department of Business and Administration
630 Jefferson Street
Jefferson City, Missouri

Dear Sir:

This is in reply to your request for an opinion, which is as follows:

> "On Thursday, October 18, 1951, the Personnel Advisory Board heard an appeal of an employee from a dismissal. A part of Section 36.380, Missouri Revised Statutes, 1949, regarding dismissal of an employee, reads as follows:
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> "'An appointing authority may dismiss for cause any employee in his division occupying a position subject hereto when he considers that the good of the service will be served thereby. No dismissal of a regular employee shall take effect unless, prior to the effective date thereof, the appointing authority gives to such employee a written statement setting forth in substance the reason therefor and files a copy of such statement with the Director . . . .'
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> "In the particular case that the Personnel Advisory Board heard, the following letter of dismissal was written to the employee:

> "'You are advised that because of conduct which is detrimental to the interests of the institution, your services as Cook II at the St. Louis State Hospital will be terminated effective after duty hours, August 31, 1951.'
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> "The questions that the Board wishes resolved are:
>
> "1. What is prior notice? In other words, a letter dated August 31, 1951, was written to the employee terminating her services effective after duty hours August 31, 1951. This notice was received by the employee September 1, 1951.
>
> "2. The other question to be resolved is whether or not the above letter meets the requirement of the law which states that the appointing authority shall give to such an employee a written statement setting forth in substance the reason therefor."

Section 36.380, RSMo 1949, contains positive language as to the procedure to be followed by an appointing authority when dismissing an employee from the classified service. It states unequivocably that "No dismissal of a regular employee shall take effect unless, prior to the effective date thereof, the appointing authority gives to such employee a written statement setting forth in substance the reason therefor and files a copy of such statement with the director."

In the case now before us we have the situation where a letter was given to an employee dismissing the said employee from the classified service effective the same date as the notice. This letter was transmitted through the mails to the employee and was not received until the day following the effective date of the dismissal.

The word "date" means the same in its legal as in its ordinary sense and imports the day of the month, the month,

and the year; the day of the month being as essential a part of the date as the month or the year. (Heffner v. Heffner, 20 S. 281, 48 La. (Ann.) 1088.)

The word "effective" in its ordinary and usual meaning is construed as denoting the production of an effect or result whose continuance in the future it suggests. (Rowan v. New York Ins. Co., 124 S.W. (2d) 577, 580.) Therefore, in relation to the present matter the term, effective date, would mean the date when the dismissal takes place and the date from which the dismissal is to continue.

The Legislature has seen fit to set up the requirement that before a discharge can take place the employee must receive a written statement prior to the effective date of the dismissal.

The word "prior" is defined in Webster's New International Dictionary (2nd Ed.) as, "preceding in the order of time; earlier and therefore taking precedence; previous; * * * also, with to, antecedent in time, * * *; anterior * * *."

Therefore, it seems inescapable that a notice of dismissal to take effect on August 31st must have been given at least on an earlier date than the date of August 31st.

We believe this view is further strengthened by the fact that "statutes regulating the general subject of notice are always to be construed, with respect to the time or period of notice, most liberally in favor of the party who is to be effected by the notice." (66 C.J.S., page 658.) From the above analysis we do not believe that the notice to the employee of her discharge was given prior to the effective date thereof, and therefore, in law, the dismissal has not taken effect.

In answer to your second question we note that the employee was notified of her dismissal "because of conduct which is detrimental to the interests of the institution." Section 36.380, RSMo 1949, provides that an appointing authority may dismiss for cause any employee in his division when he considers that the good of the service will be served thereby. However, the appointing authority must give to such employee "a written statement setting forth in substance the reason for the dismissal." The question for our determination is whether or not the reason as given in the notice sets forth "in substance" the reason for the dismissal.

The word "substance" has been defined as the essence; the material or substantial part of a thing as distinguished from "form." (State v. Burgdoerfer, 107 Mo. 1.) Therefore, as used in this statute, the statement must contain the essential reason or real reason for the dismissal.

In seeking the rule to be followed in determining what is a sufficient notice of dismissal, we note that the Supreme Court of Massachusetts considered the use of the terms, "cause" and "reason" when used in statutes concerning civil service. In the case of McKenna v. White, 192 N.E. 84, the court analyzed the two words as follows:

> "There is requirement that the authorized officer or board in removing an incumbent from office or employment in the public service under some statutes shall state the cause, in others the reason or reasons, and in still others both the cause and the reason or reasons. In Ayers v. Hatch, 175 Mass. 489, 56 N. E. 612, the statute permitted removal of an officer by the mayor 'for such cause as he shall deem sufficient and shall assign in his order of removal.' (Page 491 of 175 Mass., 56 N. E. 612, 613.) It was held that an order of removal 'for the good of the service' was sufficient under the statute. It was said at page 492 of 175 Mass., 56 N. E. 612, 613, 'Cause implies * * * a reasonable ground of removal, and not a frivolous or wholly unsatisfactory or incompetent ground of removal. If the cause assigned is a reasonable one, then, whether, under the circumstances, it is sufficient to justify a removal, is for the mayor to decide, and his decision is final.' O'Dowd v. Boston, 149 Mass. 443, 21 N. E. 949; Bailen v. Assessors of Chelsea, 241 Mass. 411, 135 N. E. 877, and cases cited. In Stiles v. Municipal Council of Lowell, 229 Mass. 208, 118 N. E. 347, the statute required that there be no removal from office 'except for just

cause and for reasons specifically given in writing.' It was held that a statement of proposed and of final removal 'for the good of the service' was ineffectual because not in conformity to the statute. The Legislature has made a distinction between 'cause' and 'reasons' in connection with removals from office or employment protected by the laws relating to the civil service where both words are used. * * *

"The two words are often used in a similar sense. There is a difference in meaning between them in application to removal from office or employment. Cause occasions the removal. It is a succinct statement of that which produces or leads to removal as the result. Reason or reasons are the circumstances, the proofs, the facts or the motives, which generate the conviction that there ought to be removal. A statement of the reason or reasons for removal is a full and fair answer to the question why was the removal made. The statement of a cause may be in general terms. A statement of the reason or reasons must be somewhat definite and detailed. Underwood v. Board of County School Commissioners, 103 Md. 181, 63 A. 221. The good of the service is a sufficient statement of a cause for removal. It is not an adequate statement of the grounds which create the state of mind precedent to the establishment of that cause in the opinion of the removing person or board. A statement of the reason or reasons leading to the removal of another from office explores the mind and searches the conscience more deeply than the statement of the cause. The manifest purpose of the provision that a removal from an appointive office

> be accompanied by written statement of the reason or reasons therefor signed by the removing officer or officers to be filed with the public records of the city is to impose the restraint upon unwarranted, prejudiced or wrongful removals naturally flowing from immediate, complete and permanent publicity of the true grounds and motives underlying that action, and to enable the removed officer or employee to know why he has been deemed unworthy to continue longer in the public service. This is by no means a vain form. Its design is to improve the public service and to afford some sense of security to faithful, efficient and honest officers and employees of good morals and sound character working with fidelity for the general welfare, and at the same time to confer upon responsible executive officers power to remove the incompetent, the inefficient and the unworthy."

In the McKenna case, the notice of removal was "for the good of the service," and this was held insufficient. We think that the terminology used in the instant notice, "because of conduct which is detrimental to the interests of the institution," is sufficiently similar that the principle of the McKenna case is applicable. The notice has stated the cause of removal but has not stated "in substance" the reason therefor.

In another case concerning a civil service statute the Court of Appeals of Ohio had the following to say concerning the sufficiency of a notice in State v. Bahr, 40 N.E. (2d) 677, 680:

> "The order of removal must not be so indefinite in its terms that its purpose and effect could not be determined. It must be sufficiently definite as to advise the employee of the charge against her in terms sufficiently explicit as to enable her to make an explanation

> if she so desires. State ex rel. Bay v. Witter, Dir., 110 Ohio St. 216, 223, 143 N.E. 556; State ex rel. Desprez v. Board of County Com'rs, 47 Ohio App. 1, 189 N.E. 665, 667.
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> "But the order of removal need go no further than to set forth the reasons in such understandable language as would convey to the one removed the facts comprising the reason for removal.
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> "'The statement of the reasons need not be as specific or particular as an indictment, nor drawn with the formal exactness of pleadings in a court of justice.' State ex rel. Desprez v. Board of County Com'rs, supra."

Therefore, it would seem that a notice must be sufficiently definite so as to advise an employee in the classified service of the charge against the employee in order to enable him to make an explanation. As stated in the above case this notice is not required to be as specific or particular as an indictment, but it still should contain such understandable language as would convey to the removed employee the facts comprising the reason for removal.

We think that our opinion in this matter is strengthened by the language used in Section 36.370, RSMo 1949, providing for suspension of employees. That section states in part, "In case of a suspension, the director shall be furnished with a statement in writing specifically setting forth the reasons for such suspension." Upon request, a copy of this statement shall be furnished to the employee. It would seem unreasonable to impute a legislative intent to require a statement specifically setting forth the reasons for a suspension and in the more drastic case of a dismissal merely provide for a general statement of the reasons.

Honorable Ralph J. Turner

CONCLUSION

Therefore, it is the opinion of this department that:

(1) Where the State Merit System Act requires a notice to be given to an employee prior to the effective date of a dismissal, a notice given on the same date as the effective date of dismissal is invalid, and the dismissal is of no effect; and

(2) Such a notice of dismissal must be sufficiently definite and explicit as to the reasons for dismissal so that the employee involved may ascertain the facts comprising the reason for dismissal and be enabled to make an explanation thereof, and, in effect, defend the charges.

Respectfully submitted,

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APPROVED:

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JRB/fh