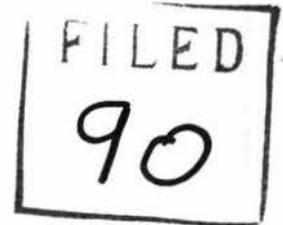


TRAINING SCHOOLS:
STATE MERIT SYSTEM ACT:

By reason of certain enactments of the 63rd General Assembly, the director and superintendents of training schools of the State of Missouri are within the provisions of the State Merit System Act.

October 14, 1948



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

Dear Sir:

This will acknowledge receipt of your recent request for an opinion. Omitting the references in your letter to certain sections of the Missouri statutes, your specific question reads:

"In order to clarify certain questions, we would like an opinion as to whether or not the Director of the Board of Training Schools and the Superintendents of the Training Schools are subject to the State Merit System Act, House Bill No. 162, Sixty-third General Assembly."

The 63rd General Assembly of the State of Missouri enacted Article I, Chapter 83A, Mo. R.S.A., which group of statutes was given the short title, "State Merit System Act," Under said act, Section 12851.2, Mo. R.S.A., (see Pocket Part, page 8), the Legislature established a basis for the employment of personnel in certain specific departments by merit. Section 12851.2(b), Mo. R.S.A., provides that, among others, the State Department of Corrections is subject to the provisions of the State Merit System Act. Said section then proceeds to enumerate the specific offices, positions and appointments in the agencies covered by this act that are exempt from the operation of said act and which may be filled without regard to the provisions thereof. The only general test of exemption laid down in Section 12851.2, supra, is found in subsection (c)(1), which reads as follows:

"(1) Members of boards and commissions and heads of departments required by law to be

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appointed by the Governor, except the Personnel Director."

All of the subsequent exemptions in Section 12851.2, supra, are specifically nominated. It might be further pointed out that no place in Section 12851.2, supra, are the director of the board of training schools and the superintendents of the training schools exempted from the provisions of the State Merit System Act. The State Department of Corrections was established under Article 1A, Chapter 48, Section 8992.1, Mo. R.S.A. Within this Department of Corrections, the Legislature saw fit to enact Section 8992.20, which created a state board of training schools and enumerated said board's powers and duties. Said section reads as follows:

"There is hereby created and established a state board of training schools which shall have charge and control of all training schools and industrial homes for boys and girls of this state: specifically, the training school for boys at Boonville; the industrial home for girls at Chillicothe, which hereafter shall be known as the training school for girls; and the industrial home for Negro girls at Tipton, which hereafter shall be known as the training school for Negro girls together with all branches and divisions thereof; and over all institutions for correctional training of juveniles which may hereafter be created in this state; which schools are hereby classified as educational institutions and recognized to have as their purpose the special correctional training, the education and the moral rehabilitation and guidance of juvenile offenders which any court of proper jurisdiction may assign to such institutions. In relation to any of the above named juvenile training schools, whenever the term commission of penal institutions is used in any act, it shall hereafter be understood to mean the state board of training schools."

(Note: These sections now being referred to may be found in Mo. R.S.A., Pocket Part, Vol. 19.)

The intent of the Legislature to completely divorce the state board of training schools from the Department of Corrections is evidenced by Section 8992.21, Mo. R.S.A., wherein it is provided:

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"The state board of training schools shall, pursuant to Section 12, Article IV, of the Constitution of Missouri, be assigned to the division of educational institutions in the department of corrections and shall be in charge of said division, but shall not be subject to orders of the director of said department of corrections and shall have only such relationship with the department of corrections as is set out in this act."

We think it clear that these two statutes, when construed together with the whole chapter creating the Department of Corrections, clearly demonstrates that it was the intention of the Legislature to establish within the Department of Corrections a separate division concerning only the state board of training schools and the training schools enumerated in Section 8992.20, supra, and the board's powers and duties relative thereto.

Appointment to the state board of training schools is made by the Governor (see Section 8992.22, Mo. R.S.A.). In furtherance of the powers delegated by the Legislature to the board of training schools, the Legislature enabled the board, by Section 8992.27, Mo. R.S.A., to perform the following function:

"The state board of training schools shall appoint a director, who shall be chief administrative officer for the board, and under the direction of the board and he shall have immediate control of the institutions, activities, employed personnel and programs of the board. The director shall be a citizen of the state of Missouri selected for his recognized character and integrity, and because of experience fitting him for successful performance of his duties. Before entering upon his duties, the director shall take an oath or affirmation to support the constitution of the United States and of the state of Missouri and to faithfully perform the duties of his office; and shall enter into good and sufficient corporate surety bond, conditioned upon the faithful performance of his duties, said bond to be approved by the attorney general as to form, and by the governor as to sufficiency; the premium on said bond to be paid by the state."

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Up to this point, we have seen that the Merit System specifically exempts any person required by law to be appointed by the Governor to any of the therein named departments; that Section 8992.20, supra, requires the Governor to appoint the board of training schools, which, under the test set out in Section 12851.2(c), would exempt the board of training schools from the Merit System. However, we also see in Section 8992.27, supra, that it is the duty of the state board of training schools to appoint the director of the training schools. Therefore, the director of training schools does not come within the specific exemptions of Section 12851.2(c) et seq., nor within the general exemption provided those persons required by law to be appointed by the Governor. Relative to the superintendents of training schools, Section 8992.29, Mo. R.S.A., provides that:

"It shall be the duty of the director of training schools, with approval of the board, to appoint for each of the juvenile training schools a superintendent
* * *"

Likewise, the superintendents, therefore, do not come within any of the specific exemptions in Section 12851.2, supra, or within the purview of the general exemption provided for those persons holding offices, positions or employment in the Department of Corrections and required by law to be appointed by the Governor.

Under the statutes cited and referred to above, we see that the state board of training schools appoints the director of training schools, and the director in turn, with approval of the state board of training schools, appoints the superintendents of each training school. The director of training schools and the superintendents of the training schools are not afforded the immunity from the State Merit System Act as is offered the director and assistant director of the State Department of Corrections. Section 8992.2, Mo. R.S.A., specifically provides that the director of the State Department of Corrections shall be appointed by the Governor. This, alone, would bring the director of the Department of Corrections under the general exemption found in Section 12851.2(c), supra. However, the Legislature, not content with that exemption, specifically provided in Section 8992.4, Mo. R.S.A., that the director and assistant director of the Department of Corrections are exempt from selection on the basis of merit as provided by law. As pointed out above, the training schools and the board, the director and superintendents of said training schools are carved out from the State Department of Corrections, and function as an independent division, subject only to the limitations as announced in Section 8992.21, Mo. R.S.A.

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Section 8992.30, Mo. R.S.A., provides as follows:

"It shall be the duty of the board of training schools to select and employ all employees on a basis of merit as provided by law, and who shall be persons of recognized good character and integrity."

We do not believe it sound to argue that, while this section requires that all employees shall be appointed on a basis of merit, the director and superintendents of the training schools occupy a different category from that of an employee. Should this deficiency of Section 8992.30, supra, bear some merit as an argument that the director and the superintendents of the training schools should not be under the State Merit System, the Merit System itself expressly states its applicability to "offices, positions and employees." (See Section 12851.1 et seq., Mo. R.S.A.)

CONCLUSION

By reason of the above quoted enactments of the 63rd General Assembly, it is the analysis and opinion of this department that the director of the training schools and the superintendents of training schools of the State of Missouri are within the provisions of the State Merit System Act.

Respectfully submitted,

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR Attorney General