

DIVISION OF EMPLOYMENT SECURITY:
MERIT SYSTEM AND EMPLOYEES:

Director of Division of Em-
ployment Security may employ
secretary for such Director
without regard to provisions
of Merit System.



December 31, 1953

Mr. Gordon P. Weir, Director
Division of Employment Security
Department of Labor and Industrial Relations
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion
of this department, reading as follows:

* * *

"The questions which I wish an opinion on
are: (1) Under the State Merit System Law
and under the law applicable to the Employ-
ment Security, which is Chapter 288, RSMo
1949, what authority does the Director of
the Division of Employment Security have
in appointing, hiring and paying a secretary
for the Director? (2) Can that secretary be
either male or female? (3) Does the person
selected as secretary have to be experienced
in either or both typing, shorthand and trans-
cribing shorthand notes in order to meet the
qualifications of a secretary as provided
for in Section 36.030, paragraph 3, sub-
paragraph (3), RSMo 1949, before the Director
can appoint such a person as his secretary.

"An early reply to this will be greatly
appreciated."

Your attention is directed to the following portion of
Paragraph 4 of Section 288.220, RSMo 1949, as amended by

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Senate Bill No. 36 of the 67th General Assembly which now appears in the 1951 Supplement.

"4. It shall be the duty of the director to administer this law; and he shall have power and authority to adopt, amend, or rescind such regulations as he deems necessary to the efficient internal management of the division. The director shall determine the division's organization and methods of procedure. Subject to the provisions of the state merit system act, the director shall employ and prescribe the duties and powers of such persons as may be necessary. The director may delegate to any such person such power and authority as he deems reasonable and proper for the effective administration of the law, and may in his discretion bond any person handling moneys or signing checks. Further, the director shall have the power to make such expenditures, require such reports, make such investigations and take such other action, not inconsistent with this law, as he deems necessary to the efficient and proper administration of the law." (Emphasis ours).

You will note that the power of employment delegated to the Director under the above-quoted portion of the statute is qualified to the extent that such employment shall be subject to the provisions of the State Merit System. We therefore, must refer to that Act to determine the limitations, if any, imposed upon such employment. We direct your attention to the following portion of Paragraph 3 of Section 36.030, RSMo 1949:

"3. The following offices, positions and appointments in the agencies covered by this chapter are hereby exempted from the operation of this law 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:

* * *

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"(3) One secretary for each director, division head and each member of boards and commissions the members of which devote their full time to the business of the board or commission the members of which are appointed by the governor, except the personnel director;
* * *" (Emphasis ours).

We have made further examination of the statute relating to the position which you fill, that is to say, Director of the Division of Employment Security, and we find that under the provisions of Section 286.130, RSMo 1949, such office is filled by appointment by the Governor. The statute mentioned reads, in part, as follows:

"The division of employment security shall be under the control, management and supervision of a director who shall be appointed by the governor as otherwise provided by law. * * *"

Therefrom it appears that to the extent of the employment of one secretary to serve the director, such employment has been exempted from the provisions of the State Merit System Act.

CONCLUSION

In the premises we are of the opinion that the Director of the Division of Employment Security may appoint and employ a secretary to serve such Director without regard to the provisions of the State Merit System Act. Having determined that such appointment and employment may be made in the manner indicated we feel that the qualifications of such secretary are to be determined solely by the Director, and that other qualifications such as the sex of the secretary, the qualifications with respect to the discharge of the duties of such secretary, etc., are matters to be determined solely at the discretion of the Director of the Division of Employment Security.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

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