

Opinion No. 141.

Public Welfare—Personnel—Appointment and Dismissal Of—Salary.

HELD: 1. Personnel of the county departments may be employed, dismissed, or promoted by the County Board only with the approval of the state department through its committee on personnel, in accordance with the provisions of the Merit System.

2. The salary of personnel attached to the county board may be fixed by the County Board with the approval of the state department through its committee on personnel, but such salary must be within the salary range as adopted in the Merit System.

3. The State Department, through its committee on personnel, may dis-

miss any member of the personnel attached to the county board for inefficiency, incompetence or similar cause, but such dismissal must be in strict accordance with the rules and regulations of the Merit System.

4. Neither the County nor State Board may reduce the salary below that fixed in the Merit System.

September 26, 1939.

Mr. I. M. Brandjord, Administrator
State Department of Public Welfare
Helena, Montana

My Dear Mr. Brandjord:

You have asked my opinion as to the authority of the State Board of Public Welfare, under the provisions of Chapter 82, Laws, 1937, and amendments thereto, and the Merit System adopted by the State Board in accordance with authority contained in the Welfare Act, in the matter of fixing and adjusting salaries of the personnel of the state and county departments. This office is also in receipt of a request for an opinion as to whether or not the language of subsection (b) of Section 5, Chapter 129, Laws of 1939, is mandatory. As these two questions are so closely related and involve the interpretation of practically the same provisions of the law, I am consolidating the two requests in one opinion.

To understand intelligently the provisions of the Welfare Act, particularly dealing with this subject, it is well to point out at the outset the reasons for the enactment of this legislation. Because of the changed economic conditions in our country, the federal government recognized the responsibility of government to provide social security for its people. In line with this, certain social security laws designed to assist the state and county governments in providing assistance for the needy were enacted by Congress. This legislation is known as the Federal Social Security Act. Under its provisions the states and counties may obtain federal grants to aid in this work providing they adopt laws in conformity with the federal act. Desiring to avail itself of this federal aid, our legislature in 1937 enacted Chapter 82. Each provision of this act had

to conform to the federal act and to the rules and regulations of the Federal Social Security Board, the administrative body of the federal act. The reasons for and purpose of our welfare act are clearly set forth by our Supreme Court in the case of State ex rel. Williams v. Kamp, reported in 106 Mont. 444, where it says:

"The obvious purpose of Chapter 82, Laws of 1937, was to cooperate with the federal government in caring for the needy and unfortunate. The aim of the legislature of Montana was to pass such a law that would meet with the conditions prescribed by Congress before the plan could be approved and the grants could be obtained from the United States. * * * *

"* * * The Montana legislature, confronted with the question of choosing to accept or reject the federal grants, chose to accept them. To do this it was obliged to meet the conditions imposed * * * ."

One of the conditions imposed was that a merit system be set up and adopted by the state board of public welfare, provision for which was made in subsection (b), Section III, Part I, Chapter 82, Laws, 1937.

In conformity with the mandate of the legislature, a merit system was promulgated and adopted by the State Board of Public Welfare and went into effect on March 1, 1938, and has ever since said date been in operation. This system relates to the qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules. The plan has been accepted by the Federal Social Security Board as meeting all the requirements of the Federal Act.

In addition to authorizing the State Board to adopt a Merit System "pertaining to qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules," (subsection (b), Section III, Part I, Chapter 82), the legislature incorporated in the Welfare Act certain specific provisions relating to the authority of the State and County Boards with relation to the same subjects. (See subsections (c) and (d), Section III, Part I; subsection (b),

Section VI, Part I; subsection (f), Section VII, Part I; subsections (a) and (b), Section X, Part I.)

After the Welfare Act was in operation for two years, and the Merit System for about one year, the legislature of 1939 adopted certain amendments to the sections above referred to. The first of these is Section VI of Part I, and reads as follows (Chapter 129, Laws of 1939, Section 2):

“(b) In conformity with the merit system governing the selection and entire status of officers and employees in the state department of public welfare and in all county departments of public welfare in the State of Montana, adopted by the state board of public welfare and approved by the social security board, the state administrator shall appoint such other state department and supervisory field personnel as may be necessary for the efficient performances of the activities of the state department. The administrator shall also supervise the appointment, dismissal and entire status of the public assistance staff attached to the county boards of public welfare in accordance with the merit system * * * .”

and subsection (b) of Section X, Part I, was amended to read as follows (Chapter 129, Laws of 1939, Section 5):

“* * * The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for in efficiency, incompetence or similar cause. * * * ” (Underlining in both quotations denotes the new matter.)

The Merit System as adopted sets up, within the State Department, a committee on personnel. The powers and duties outlined for this committee are expressed in Rule 1 as follows:

“This committee shall have supervision and control over new appointments, which appointments must be

made from the register of eligibles, shall have supervision and control over promotions, exact classifications of employees and the fixing of salaries within the salary ranges already prescribed in this plan for employees in the State and County Departments and such incidental related powers as may be found necessary to carry out the general powers hereby delegated. * * ”

Therefore, having in mind the provisions of the Merit System, and particularly of Rule 1, supra, it would seem that the legislature by the adoption of the amendments referred to gave recognition to and approved the same. By the use of the word “shall” throughout the amendments, the legislature intended that the provisions should be mandatory.

It is therefore my opinion that,

First: Personnel of the county departments may be employed, dismissed, or promoted by the County Board only with the approval of the state department through its committee on personnel, in accordance with the provisions of the Merit System.

Second: The salary of personnel attached to the County Board may be fixed by the County Board with the approval of the state department through its committee on personnel, but such salary must be within the salary range as adopted in the Merit System.

Third: The state department, through its committee on personnel, may dismiss any member of the personnel attached to the county board for inefficiency, incompetence, or similar cause, but such dismissal must be in strict accordance with the rules and regulations of the Merit System.

Fourth: Neither the County nor State Board may reduce the salary below that fixed in the Merit System.

In arriving at these conclusions, I am mindful of the fact that under the provisions of the welfare act one-half the salary, travel, and subsistence expense of the personnel attached to the county board is paid from county funds. In view of these provisions, the conclusions here reached may seem unjust, but that is a matter to be called to the attention of the legislature.