

**Opinion No. 75.**

**Merit System Council—Unemployment Compensation Act—Public Employees Retirement System—Welfare—State Public Employees Retirement System.**

**Held: The board of administration of the State Employees Retirement System may not select its personnel through the Merit System Council.**

October 1, 1945.

Mr. Sam W. Mitchell, President  
Public Employees Retirement System  
State Capitol  
Helena, Montana

Dear Mr. Mitchell:

You have requested my opinion asking if the Merit System Council has legal authority to proceed with the classification, examination and certification of personnel for the positions with the Public Employees Retirement System.

The Merit System Council was set up under the authority and direction of Section III (b) of Part I, Chapter 82, Laws of 1937. Its purpose was to "establish and maintain minimum standards of service and personnel, and to formulate salary schedules for the classified personnel, based upon training, experience and ability, for employees selected for positions in the state office

of the state department (of Public Welfare) and in county departments." It was a requirement of the Social Security Board so that "Personnel standards shall conform insofar as possible with general standards as established or required by the federal social security board." This requirement is made of each state agency or department to which the federal government contributes funds for administrative or other purposes.

Under the Unemployment Compensation Act, Chapter 137, Laws of 1937, it is specifically provided by Section 11 (d) as follows:

"Subject to other provisions of this act, the commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The commission may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder. The commission shall classify positions under this act and shall establish salary schedules and minimum personnel standards for the positions so classified. The commission shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this act. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon rating of efficiency and fitness and for terminations for cause."

Under such authority specifically granted the Unemployment Compensation Commission, it has utilized the facilities of the Merit System Council. This it may legally do by virtue of the authority granted it by the legislature.

I find no similar provision in any acts of the legislature creating other departments, boards and commissions. There is none in Chapter 212, Laws of 1945, establishing the Public Employees Retirement System, and creating the board of administration thereof. With reference to the appointment of personnel for the board, that act provides in Section 14 (b) as follows:

"The board may establish such rules and regulations as it deems proper, within the limitations of this act and for its proper administration, operation and enforcement, and shall elect one of its members president, and shall appoint and fix the compensation of a secretary who shall have the power to administer oaths, and other necessary employees . . ." (Emphasis mine.)

Here, without other qualifications, the legislature has specifically directed the board to "appoint and fix the compensation of a secretary," and other necessary employees. It will be noted that while this same language is used in Chapter 137, Laws of 1937, it is qualified by the words "subject to the other provisions of this act," and then follows the provisions for the classification of positions and establishing of salary schedules and minimum personnel standards, and providing for the holding of examinations to determine the qualifications of applicants for the positions so classified.

It is well known that the policy of this state in the selection and appointment of personnel for the various boards, commissions and departments, prior to the adoption of the merit system as above noted, was not on the basis of examination or classification. In fact, at the present time, as is shown above, only those departments to which federal funds are allocated use the merit system.

Had the legislature desired to require this method adopted by the board of administration of the State Public Employees Retirement System, it could easily have so provided as it did in the Welfare Act and the Unemployment Compensation Act. It is a well known principal of construction of statutes that the legislature, in the enactment of any law, is presumed to proceed having in mind existing statutes. (In re Wilson's Estate, 102 Mont. 178, 194, 56 Pac. (2d) 733.)

Therefore, when the legislature created the board of administration of the State Employees Retirement System and authorized it to appoint the personnel, it must be deemed to have had in mind the general policy and provisions of the Welfare and Unemployment Compensation Commission Acts with reference to selection of personnel through the merit system. As no similar provision was made in this act, it is only reasonable to assume that the legislature did not intend that the merit system should be used in the appointment of personnel of the State Employees Retirement System. By omitting provision therefor, the legislature intended that the regular method of appointment of personnel should be followed.

It is therefore my opinion that the board of administration of the State Employees Retirement System may not select its personnel through the Merit System Council.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General