

Opinion No. 17

APPROPRIATIONS — APPRENTICESHIP COUNCIL — DEPARTMENT OF AGRICULTURE, LABOR AND INDUSTRY — COMPENSATION, Apprenticeship Council

HELD: The Commissioner of Agriculture, Labor and Industry has the duty of appointing such personnel of the Apprenticeship Council, other than teachers and co-ordinators as may be necessary to aid the council in the execution of its functions. The compensation and tenure of all personnel is fixed by the State Board of Exam-

iners. The Commissioner of Agriculture, Labor and Industry has the duty of approving all claims against the appropriation made to the council and of approving all requisitions for supplies needed by the Council.

March 26, 1947

Mr. Albert H. Kruse, Commissioner
Agriculture, Labor and Industry
State Capitol
Helena, Montana

Dear Mr. Kruse:

You have advised, "The Thirtieth Legislative Assembly made substantial appropriations in H.B. 114 and H.E. 144 to the Apprenticeship Council," and request my opinion on the following questions:

1. In view of the appropriations having been made by the Legislature to the Apprenticeship Council "for salaries, expenses and operation" is it my duty as Commissioner of Agriculture to appoint the personnel necessary to carry out the duties imposed upon the Council?
2. Is it my duty as Commissioner of Agriculture to approve the claims made against the Appropriation and approve requisitions for supplies needed by the Council?

These questions concern your powers and duties under the provisions of Chapter 149, Laws of 1941. Whatever powers or duties you may have must be found in the provisions of this act. The Supreme Court of Montana has on several occasions reiterated the rule that a public officer or board has only such powers as are given him or it under the Constitution or laws of the State, or those necessarily implied. In the case of *In re Farrell*, 36 Mont. 254, 92 Pac. 785, the court said:

"It may be laid down as a general principle that the limit of the power of a public officer is the statute conferring the power, and what further power is necessarily implied in order to effectuate that which is expressly conferred. In the performance of the ministerial duties expressly enjoined, however, when the mode of performance is prescribed,

no further power is implied, nor has the officer any discretion. He must strictly pursue the statute."

Chapter 149, Laws of 1941 which create the Apprenticeship Council is very vague insofar as providing administrative duties. Section 1 of the Act places the duty of appointment of the members of the council in the hands of the Commissioner of Agriculture, Labor and Industry, fixes the number and term of office of such members, and provides for filling vacancies. It does not make the Commissioner a member of such Council. Paragraph (b) of this section provides:

"(b) subject to the approval of the federal committee on apprenticeship, the apprenticeship council shall:

- (1) Establish standards for the apprenticeship agreements in conformity with the provisions of this act;
- (2) issue such rules and regulations as may be necessary to carry out the intent and purposes of this act; and
- (3) perform such other duties as are hereinafter imposed. Not less than once a year the apprenticeship council shall make a report through the commissioner of the department of agriculture, labor and industry of its activities and findings to the legislature which shall be made available to the public.

Section 2 defines certain other duties of the council, but all relate to the making, approval and registering of apprenticeship agreements and keeping records thereof and issuing certificates of completion of apprenticeship. It also gives the council the authority to terminate or cancel apprenticeship agreements and to act to bring about the settlement of differences arising out of such agreements where they cannot be adjusted locally. This section then provides:

"Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards

responsible for vocational education. **The commissioner of the department of agriculture, labor and industry is authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act.**

No power or duty of appointment of personnel is lodged with the council itself. On the contrary this power is divided. By section 2 (5), selection and training of teachers and co-ordinators is the responsibility of state and local boards responsible for vocational education. Appointment of other personnel, that is other than teachers and co-ordinators, is lodged with the Commissioner of Agriculture, Labor and Industry.

In giving the power and duty of appointment to both the council and some of the personnel to the commissioner of agriculture, labor and industry, who is the administrative head of the Department of Agriculture, Labor and Industry, and as such of the Division of Labor within such department, it would appear the legislature intended the Apprenticeship Council should be under the administrative control of the Division of Labor.

While it is clear the Commissioner of Agriculture shall have the power to appoint some of the personnel for the apprenticeship council, there is no provision in the act designating the number, tenure or compensation of such personnel. We may, therefore, look to some other law for this authority.

Chapter 30, Laws of 1943, provides:

Section 1. The State Board of Examiners of the State of Montana shall by resolution, fix and designate the number, compensation, terms and tenure of office of all assistants, deputies, agents, attorneys, administrators, engineers, experts, clerks, accountants, stenographers and executive attaches of all civil executive state offices, boards, commissions, bureaus and departments of the State of Montana.

Section 2. The civil executive state officers, boards, commissions, bureaus and departments of the State of Montana and the heads of state institutions, with the exception of state educational institutions under the jurisdiction of the state board of

education, shall have the power to appoint their own employees of the several classes enumerated in Section 1 of this act, in the manner and for the compensation fixed by the state board of examiners. Such civil executive state officers, boards, commissions, bureaus, departments and the heads of the institutions designated above shall have the power to discontinue the services of any of said employees; provided, however, that the state board of health, unemployment compensation commission and the department of public welfare shall in the appointment and discharge of such assistants, deputies, agents, attorneys, administrators, engineers, e x p e r t s , clerks, accountants, stenographers and executive attaches, conform to and abide by all statutes of the United States of America relating to the establishment and maintenance of personnel standards on a merit basis for the said board, commission and department.

Therefore, under the specific provisions of Chapter 149, the Commissioner of Agriculture has the authority to appoint the personnel for the apprenticeship council, other than those mentioned in Section 2 (5) of the Act. The compensation and tenure of such personnel, however, not being provided for by the Act, are fixed and determined by the State Board of Examiners under Chapter 30, Laws of 1943. As to the number of such personnel, Chapter 149 specifically provides that such personnel as may be necessary, shall be appointed. Therefore, the Commissioner has authority to appoint such number as may be necessary to aid the council in the execution of their functions. Chapter 149, Laws of 1943, being a later act, would govern us to this provision of Chapter 30, Laws of 1941.

The Apprenticeship Council being under the administrative head of the Division of Labor, that is, the Commissioner of Agriculture, that officer has the duty of approving claims made against the council's appropriation and of approving requisitions for supplies needed by the Council.

It is therefore my opinion,

1. The Commissioner of Agriculture, Labor and Industry has the duty of appointing such personnel of the

Apprenticeship Council, other than teachers and co-ordinators as may be necessary to aid the council in the execution of its functions.

2. The compensation and tenure of all personnel is fixed by the State Board of Examiners.

3. The Commissioner of Agriculture, Labor and Industry has the duty of approving all claims against the appropriation made to the Council and of approving all requisitions for supplies needed by the council.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.