

You have requested my opinion concerning the purposes, duties and rule-making powers of the director and personnel commission, as set forth in Chapter 251, Laws of 1953.

In the interpretation of Chapter 251, Laws of 1953, the legislative intentions must be controlling. In *State v. Redmond*, 73 Mont. 276, 237, Pac. 486. our court stated rules which are helpful in the construction of statutes. These rules read as follows:

"And, in interpreting its provisions, the language employed must be construed in accordance with its usual, ordinary and accepted meaning, so as, if possible, to give it vitality, and make operative all of its provisions. (Citing cases.) It should be so construed as to give a sensible and intelligent meaning to every part and avoid absurd and unjust consequences."

At the outset, it is important to remember that this is a new law which creates a new department without records or precedents to fix the pattern of operation. The principal duties of the Department of State Personnel are:

Opinion No. 57.
Department of State Personnel—
Duties of Director and Commission—
Rules of Commission.

HELD: The principal duties of the Department of State Personnel created by Chapter 251, Laws of 1953, are:

1. To establish a plan and classify all state employees who hold positions in the state classified service.
2. To prepare a compensation plan for state employees in the classified service for submission to the next Legislative Assembly.
3. To examine all applicants for positions in the classified service after April 1, 1955.
4. To make rules and regulations and conduct investigations in aid of, and to fulfill the principal duties of the Department.

January 29, 1954.

Mr. A. E. Burgan, Director
Department of State Personnel
Sam W. Mitchell Building
Helena, Montana

Dear Mr. Burgan:

1. To establish a classification plan of all state employees who hold positions in the state classified service. (Subsection 5 of Section 6 and Subsection 1 of Section 10.)
2. To prepare a compensation plan for all state employees in the classified service for submission to the 1955 legislature. (Subsection 2 of Section 10.)
3. To give examinations to test the fitness of applicants for positions in the classified service. (Subsection 3 of Section 9 and Subsection 3 of Section 10.)

The power to adopt rules and regulations to carry out the purposes of the Act was given to the commission in Subsection 7 of Section 6 and Section 10 of Chapter 251, Laws of 1953. In Subsection 2 of Section 6, it is made the duty of the commission to "represent the public interests in the improvement of personnel in the state service." These duties and powers, while expressed in broad language, are not to be construed as giving the Department

of State Personnel unlimited authority to supervise, investigate and regulate all employment within the State of Montana. As previously pointed out, there are three principal obligations and these fix the policies of the statute. The rule-making power of the commission in all investigations and studies should be performed to effectuate efficiently the legislative policy. If the legislature were to give the commission the power to fix policies, then there would be an unlawful delegation of legislative power. The rule is well expressed in *Chicago, Milwaukee & St. Paul Railway Company v. Board of Railroad Commissioners*, 76 Mont. 305, 247 Pac. 162, where the court said:

"Congress, it has been said, and the rule is applicable here, 'may not delegate the choosing of policies nor the duty of formally enacting the policy of the law, but it may formulate the policy as broadly and with as much or as little detail as it sees proper and it may delegate the duty of working out the details and the application of the policy to the situation it was intended to meet'."

The statute under consideration does not create a civil service system in Montana which is a guide to an understanding of the Act and an additional restriction on the powers granted to the Department of State Personnel. That the personnel administration law is not a true civil service law is apparent when it is observed that permanent tenure is not given to an employee during good behavior and satisfactory performance of duties of his job. Such provision is an essential element of a true civil service Act, and the fact that it is not included in this new legislation means that the appointing power of the various offices, boards and commissions has not been changed or diminished in any manner.

The fact that the appointing power was not altered results in a marked limitation of the powers of the director and personnel commission in making rules and regulations pertaining to the state offices and employees. The restriction of authority of the personnel department is emphasized by the provisions of Section 15, Chapter 251,

Laws of 1953, which grants the right of a hearing and an appeal to an employee who is dissatisfied with his classification. If the employee had job security, which is characteristic of a true civil service law, then a broader appeal right would have been granted by the legislature to the employee to protect his employment.

Of necessity, the first duty of the Department of State Personnel is to classify the state employees. (Section 3, Chapter 251, Laws of 1953.) The classified service includes all positions in all state offices, boards, commissions, bureaus, institutions and agencies of the State of Montana except those enumerated in the section. Unless an officer or an employee comes clearly within one of the exceptions, then the position of such officer or employee should be classified and placed in the same category as others performing similar duties. The express mention of the enumerated exceptions implies the exclusion of any other exceptions. (*Stephens v. City of Great Falls*, 119 Mont. 368, 175 Pac. (2d) 408.)

It is to be noted that several boards and departments have deputies who are of equal rank. Subsection 4 of Section 3, supra, which is one of the exceptions from the classified service, reads as follows:

"One principal assistant or deputy and one private secretary for each board or commission or head of a department appointed by the governor or elected."

It is impossible to give a construction to this portion of Chapter 251, supra, so as to designate one deputy exempt from the provisions of the Act where two or more deputies perform services of equal importance and responsibility. This is an ambiguity which should be clarified by the legislature by amendment. Until such alteration is made in the law, the boards and departments which have deputies of equal rank should so designate them and they should be excluded from classification.

The examinations required by the Act to test the fitness of employees are not competitive in nature for the reason that the statute does not require the appointing power to select

as the appointee the applicant receiving the highest grade in the examination. In other words, any applicant who meets the minimum standards fixed by the examination is eligible to be appointed to a position. Employees in the state service on the effective date of the Act need not pass an examination to remain in their present positions as is provided in Section 12.

Section 16 of Chapter 251 defers the giving of examinations until April 1, 1955, and also withholds the payroll certification power of the director until such date. The postponement until April 1, 1955, clearly indicates the legislature intended the interim period to be used by the Department of State Personnel for classification of employees, study of the problems which will arise in the administration of the law and formulation of a compensation plan which will complement the classification system.

The preparatory period will make possible one of the general purposes of the law—"That uniformity in compensation of state employees for similar work shall be based on uniform classification of state employees."

It is therefore my opinion that the principal duties of the Department of State Personnel are:

1. To establish a plan and classify all state employees who hold positions in the state classified service.
2. To prepare a compensation plan for state employees in the classified service for submission to the next Legislative Assembly.
3. To examine all applicants for positions in the classified service after April 1, 1955.
4. To make rules and regulations and conduct investigations in aid of, and to fulfill the principal duties of the department.