

**Opinion No. 76.****Department of State Personnel—Classified Service Includes Employees of the University System Not Expressly Excluded.**

Held: All employees of the university system, except those excluded by Sub-section 7, Section 3, Chapter 251, Laws of 1953, are included in the classified service administered by the department of state personnel.

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May 7, 1954.

Dr. L. O. Brockmann, Chairman  
Executive Council of the  
University of Mont.  
State Capitol Building  
Helena, Mont.

Dear Mr. Brockmann:

You have requested my opinion as to whether any employees of the university system are included in the classified service under the jurisdiction of the department of state personnel as established in Chapter 251, Laws of 1953.

Section 3, Chapter 251, *supra*, states that the classified service "shall comprise all positions in all state offices, boards, commissions, bureaus, departments, institutions and agencies of the State of Montana." except the classes which are enumerated. Sub-section 7, Section 3, Chapter 251, *supra*, provides that one of the exempt groups is:

"President, instructional and scientific staffs of all branches of the six (6) units of the University of Montana and student employees of such institutions."

As was previously held by this office in Opinion No. 57, Vol. 25, Report and Official Opinions of the Attorney General, state employees come under the classified service unless it is clear that such employees are exempt. Many employees of the university system could not be considered as coming within the categories designated in the above quoted exception and for this reason must be classified by the department of state personnel.

In your letter you called attention to Section 11, Article XI of the Montana Constitution, which reads in part as follows:

"The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law."

This constitutional provision has been construed by the Montana Supreme Court, and several cases throw light on the problem with which we are concerned.

In *State v. Brannon*, 86 Mont. 200, 283 Pac. 202, the court, considering the relative powers of the legislature and the state board of education held:

"The board of education is a part of the executive department, and is but an agency of the state government. The legislature may prescribe the extent of the powers and duties to be exercised by the board in the general control and supervision of the University of Montana."

Section 11, Article XI of the Montana Constitution, was again considered in the case of *State v. State Board of Education*, 103 Mont. 336, 62 Pac. (2d) 330, and a similar conclusion was reached concerning this constitutional provision. The court stated:

"This provision merely vests control over the state educational institutions in the board and authorizes

the legislature to define and circumscribe the powers and duties of the board."

It must be concluded, from the foregoing, that the legislative branch of the government may define the powers and regulate the exercise of such powers that were granted to the state board of education under the Constitution. The work of the department of state personnel in classifying all employees coming within the Act and making the studies contemplated by Chapter 251, Laws of 1953, would in no way interfere with the "general control and supervision of the state university and the various other state educational institutions." There would be no interference with the appointing power.

A case that is very similar on its facts is that of *State v. Edwards*, 38 Mont. 250, 99 Pac. 940 where the constitutionality of a statute creating a police commission for cities was considered. The Act in question established a commission which acted as an examining board and gave civil service status to policemen. The court said of this statute:

"... no extraordinary powers are conferred upon the members of the examining and trial board. Their duties consist merely in designating certain applicants as having the necessary qualifications to act as policemen and in trying charges against members. It is expressly provided that the mayor shall have charge of, and supervision over, the police department, and shall appoint all the members and officers thereof, including the members of the examining and trial board. No department is added to the city government and none is cut off therefrom. **No powers are taken away from any department, nor are the powers or functions of any department interfered with or in any way curtailed . . .**" (Emphasis supplied.)

The principle stated in the Edwards case quoted above that a police commission does not interfere with the inherent authority of a municipal corporation, applies to your question. In 10 Am. Jur. 923, the text states in regard to civil service laws that:

"Nor do such statutes unconstitutionally interfere with the inherent right of a municipal corporation to select its own officers."

Tenure is not given to employees by Chapter 251, Laws of 1953, and, as a consequence, the system established under the statute is not a true civil service act. It is less restrictive on the appointing power, and the authorities herein cited, coupled with the broad powers of the legislature, recognized by the Supreme Court, to regulate the administration of the university system, justify the conclusion that Chapter 251, Laws of 1953, covers the employees of the institution.

It is, therefore, my opinion that all employees of the university system, except those excluded by Sub-section 7, Section 3, Chapter 251, Laws of 1953, are included in the classified service administered by the department of state personnel.