

VOLUME NO. 36

Opinion No. 29

PUBLIC EMPLOYEES — Classification plan. Sections 59-904 and 59-914.

HELD: The state employee classification plan, established pursuant to Chapter 440, Laws of 1973, is applicable to employees of state agencies administered by the Merit System.

October 7, 1975

The Reverend Joseph D. Harrington
Chairman, Merit System Council
Department of Administration
Capitol Station
Helena, Montana 59601

Dear Reverend Harrington:

You have requested my opinion on the following question:

Is the state employee classification plan, established pursuant to Chapter 440, Laws of 1973, applicable to employees of state agencies administered by the Merit System?

In Chapter 440 of the Laws of 1973, the Montana Legislature instructed the Department of Administration to develop a wage and salary plan for state employees to be submitted to the 1975 Legislature for approval. In addition, Section 3 of Chapter 440 gave the Department the following immediate authority:

The department shall develop a personnel classification plan for all state positions and classes of positions in state service, following hearings involving affected employees and employee organizations, except those exempt in section 2 [59-904] of this act.

Section 2 does not exempt Merit System employees from the personnel classification plan. However, Section 16 provides as follows:

The merit system, established in 1940 by certain state agencies of state government, as a requirement for receipt of federal funds, shall continue to operate for those agencies under the policies and procedures established by the merit system council.

Your question, then, is whether Section 16, which is codified at Section 59-914, exempts state agencies administered by the Merit System from personnel classification under Section 3, which is codified at Section 59-905.

In construing Chapter 440, it is important to note that this Chapter is not limited to the specific area of employee classification and pay. Section 14 provides that "[t]he department shall issue personnel policies for the state." This is such a broad grant of general authority to the Department of Administration that it might be construed to allow the Department to usurp many of the functions presently performed by the Merit System, such as the administration of merit tests to job applicants. It is significant, then, that immediately following Section 14 in the Code appears Section 16, which continues the Merit System under its established policies and procedures.

When a general and a particular statute are inconsistent, the particular statute is paramount to the general statute. Section 93-401-16; *City of Billings v. Smith*, 158 Mont. 197, 490 P.2d 221 (1971). In the present situation, Sections 14 and 16 deal with personnel administration law generally. Section 3, on the other hand, deals specifically with the classification aspect of personnel administration. Therefore, I conclude that in the specific area of employee classification, Section 3 must prevail and only those employees and agencies listed in Section 2 are exempted from the classification plan. Employees of Merit System administered agencies are not so exempted.

My conclusion here is confirmed by a review of prior law and present Merit System Rules. Originally enacted as Chapter 251 of the Laws of 1953, the former

state personnel administration law provided for a system of state employee classification. However, Section 3, Subsection 11, exempted the following agencies and employees from the scope of that law:

Individuals, employees and agencies under the present joint merit system now effective in state agencies expending federal funds **except that the position classification plan and compensation plan shall apply to such employees.** (Emphasis added)

Thus, both the state employee classification and pay plans applied to employees under the Merit System. The personnel administration law was in effect from 1953 until 1967. Joint Merit System Rules, Art. 2, Section II, the rule under which Merit System agencies presently formulate and adopt their employee classification plans, was adopted in its present form in 1962, while the state personnel administration law was in effect.

It was drafted to allow the uniform state employee classification and pay plan to be applied to employees under the Merit System. The rule requires each Merit System administered agency to establish a classification plan for all positions. The classification plan is submitted to the Merit System Council for review and recommendations only. The plan, with recommendations, is returned to the agency for final adoption. Under the 1953 law and Merit System Rule, the agency was to adopt a classification plan in harmony with the uniform state plan.

Art. 2, Section II, remained unamended at the time that Chapter 440 was enacted into law. Therefore, application of the present classification and pay plans to employees under the Merit System is not inconsistent with that rule. More importantly one of the procedures which the Legislature continued in Section 16 was an employee classification system which was designed to facilitate the operation of a uniform employee classification plan and which gave the Merit System Council no authority to adopt or veto a classification plan for any of its employees.

Exemption of the employees under the Merit System from the plan would exempt some 2,000 to 2,500 employees from the system. Such a large exemption would frustrate the purpose of the act.

THEREFORE, IT IS MY OPINION:

The state employee classification plan, established pursuant to Chapter 440, Laws of 1973, is applicable to employees of state agencies administered by the Merit System.

Very truly yours,

ROBERT L. WOODAHL
Attorney General