

VOLUME NO. 37

OPINION NO. 123

CONSOLIDATION - Merger of agency staff functions; DEPARTMENT OF ADMINISTRATION; MERIT SYSTEM COUNCIL; STATE AGENCIES - Agencies attached for administrative purposes only; REVISED CODES OF MONTANA, 1947 - Sections 82A-102(2), 82A-108, 82A-206(2).

HELD: The Merit System Council may enter into an agreement with the Department of Administration to allow the department to perform staff functions for the council provided the council continues to retain its identity and exercise independent quasi-judicial, quasi-legislative, licensing and policy-making functions as provided by law.

17 March 1978

Jack C. Crosser, Director  
Department of Administration  
Mitchell Building  
Helena, Montana 59601

Dear Mr. Crosser:

You have requested my opinion on the following question:

May the Merit System Council enter into an agreement with the Department of Administration, to which the Council is attached for administrative purposes only, to allow the department to perform staff functions for the council? Such an agree-

ment would provide that the council retain its identity and independent quasi-judicial, quasi-legislative, licensing and policy-making functions but would result in a functional merger of the two agencies at the staff level.

The Merit System Council is created and attached to the Department of Administration for "administrative purposes only" by section 82A-206(2), R.C.M. 1947. The term "administrative purposes only" is defined in section 82A-108 as follows:

- (1) An agency allocated to a department for administrative purposes only in this title shall:
  - (a) Exercise its quasi-judicial, quasi-legislative, licensing and policy-making functions independently of the department and without approval or control of the department.
  - (b) Submit its budgetary requests through the department.
  - (c) Submit reports required of it by law or by the governor through the department.
  
- (2) The department to which an agency is allocated for administrative purposes only in this title shall:
  - (a) Direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency.
  - (b) Include the agency's budgetary requests in the departmental budget....
  - (d) Provide staff for the agency. Unless otherwise indicated in this title, the agency may not hire its own personnel. (Emphasis added).

Section 82A-206(2) provides that the council "may hire its own personnel, and section 82A-108(2)(d) does not apply." It is apparent that the Merit System Council has the discretion to hire its own personnel, or to allow the Department of Administration to do the hiring. The proposed functional merger of the council and the department at the staff level is merely an articulated choice by the council to refrain from hiring its own staff and to delegate routine staff functions to the department.

The only apparent potential obstacle to the proposed merger of the Merit System Council with the department is the language requiring the independent exercise of the discretionary powers of the attached agency. 7

Since it is clear from the terms of the proposed agreement between the council and the department that the council will retain that independence I see no legal objection to the arrangement. 7

The proposed administrative arrangement will fulfill the purposes of executive reorganization, enumerated in section 82A-102(2) as follows:

It is the public policy of this state and the purpose of this title to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions;...and to eliminate overlapping and duplication of effort within the executive branch of state government.

THEREFORE, IT IS MY OPINION:

The Merit System Council may enter into an agreement with the Department of Administration to allow the department to perform staff functions for the council provided the council continues to retain its identity and exercise independent quasi-judicial, quasi-legislative, licensing and policy-making functions as provided by law.

Very truly yours,

MIKE GREELY  
Attorney General