

VOLUME NO. 37

OPINION NO. 95

STATE EMPLOYEES - State attorneys subject to state classification and pay plan; ATTORNEYS - When subject to the state classification and pay plan; ATTORNEY GENERAL - Supervision of state attorneys; REVISED CODES OF MONTANA, 1947, Section 59-904.

HELD: Recent exemptions to the state classification and pay plan do not apply to attorneys employed by state agencies who are commissioned as special assistant attorneys general, unless those attorneys are under the immediate supervision or control of the Attorney General.

5 December 1977

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

Dear Mr Crosser:

You have requested my opinion regarding the following question:

Which attorneys employed by the state are exempt from the state classification and pay plan by virtue of the recent amendments to section 59-904, R.C.M. 1947?

Section 59-904, R.C.M. 1947, as amended by chapter 488, Laws 1977, provides in pertinent part:

Officers and Employees Excepted From Provisions of Act. This act does not apply to the following positions in state government: ... (10) Legal services staff and the special assistant attorneys general under the direct control of the Attorney General.

The statute exempts certain state employees from the provisions of the state classification and compensation plan. Clearly, the language of the section is intended to exempt all employees of the Legal Services Division within the

Department of Justice, including assistant attorneys general. The question is, however, who are the special assistant attorneys general under the direct control of the Attorney General?

Article VI, section 4(4), Montana Constitution provides:

The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

The Attorney General is the chief legal officer of this state. State ex rel. Olsen v. Public Service Commission, 129 Mont. 106, 283 P.2d 584; Woodahl v. State Highway Commission, 155 Mont. 32, 465 P.2d 818. In addition, section 82-401(1) specifies that he has the duty to prosecute or defend all causes to which the state, or any officer thereof, is a party, as well as the authority to intervene in all suits or proceedings which are of concern to the state or the general public. See Woodahl v. Board of Natural Resources, 163 Mont. 193, 516 P.2d 383. Nonetheless, the Supreme Court in Woodahl v. Highway Commission, supra, held that the governor, with his executive powers under the Constitution, coupled with the legislative authorization in section 82-1301(5) and the legislative authority granted the State Highway Commission, had the power to employ legal counsel.

While that opinion was specifically limited to the precise issue before the Court, it has become the practice, especially since Woodahl v. Board of Natural Resources, supra, that certain agencies employ their own counsel. The Attorney General upon notification issues the agency attorney a commission as special assistant attorney general for the purposes of handling the legal affairs of that particular department. Those special assistants are required to appraise and inform the Attorney General of matters in litigation and other significant legal developments. However, these special assistant attorneys general are not under the direct control of the Attorney General. Consequently, those attorneys so employed are subject to the state classification and pay plan.

It is a well-established rule of statutory construction that the intent of the Legislature must be determined from the plain meaning of the words used. Keller v. Smith, 33 St. Rep. 828, 553 P.2d 1002; Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 66, and cases cited therein. Consequently, in

interpreting the language of the statute, the only attorneys commissioned as special assistant attorneys general exempt from the state classification and pay plan are those directly employed or immediately supervised by the Attorney General. Those attorneys employed by the state who are not immediately responsible to the Attorney General for their employment or supervision are not exempt from state classification and pay plan.

THEREFORE, IT IS MY OPINION:

Recent exemptions to the state classification and pay plan do not apply to attorneys employed by state agencies who are commissioned as special assistant attorneys general, unless those attorneys are under the immediate supervision or control of the Attorney General.

Very truly yours,

MIKE GREELY  
Attorney General