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CIVIL SERVICE COMMISSION: Use of constitutionally required appropriation.

APPROPRIATIONS: Necessity for appropriation for suggestion awards program.

The employee suggestion awards program for classified state employees is constitutional. The payment of the cash awards for that program to employees of departments other than Civil Service from the 1 per cent appropriation required by the Constitution would be using those funds for an authorized purpose.

No. 4702

July 17, 1970.

The Honorable Marvin R. Stempien
State Representative
35th District
House of Representatives
The Capitol
Lansing, Michigan 48903

Your recent letter with reference to the necessity of an appropriation for the payment of cash awards pursuant to the employees suggestion awards program requests my opinion upon two questions:

"1. Is the program constitutional?

"2. Can it be paid out of 1% Civil Service Budget as required by Article XI, Section 5 of the Constitution of the State of Michigan?"

The literature issued by the Department of Civil Service describes the suggestion plan as:

"A formal system for encouraging employees to submit feasible ideas that will benefit the state. Cash awards or other suitable recognition will be given to employees for ideas that are accepted and put into use."

The type of suggestion sought is described as:

"Practical ideas which make an operation easier, faster, safer or more efficient; avoid delays; eliminate duplication of work; save time, money or materials; improve communications or improve service to patrons."

The program is available to all classified employees.

Upon receipt of your request, the Department of Civil Service was requested to submit a statement of the Commission's position as to the necessity for additional legislative appropriation to defray the payment of cash awards. Reply thereto was to the following effect.

At the time of the inception of this program in the early 1960's, the Commission was convinced of the need for such a program. The possibility of using a portion of the Commission's constitutionally earmarked appropriation to finance payment of the awards was considered but rejected because, among other reasons, of the questionable legality thereof. Further, that the taking of action to require individual departments to pay such

awards, even in the absence of specific appropriation therefor, was also rejected as not being feasible even if legally authorized. The reply continued:

"In the absence of a legislative appropriation, the Civil Service Commission approved a 'pilot' suggestion program limited to the employees of the Department of Civil Service in 1964, limited to suggestions which would improve our own operations. It was an immediate success."

Thereafter annual appropriations were made for the purpose of the payment of the cash awards as distinguished from any costs of administration of the program. See, for example, Section 16 of Act 133, P.A. 1969, p. 273.

Thus, while this program was instituted by the Department of Civil Service it has since been administered by that department in cooperation with the other administrative departments of State government. The legislature by appropriating funds for the payment of the suggestion awards has not only recommended the program but also given its tacit approval thereto. In answer to your first question I do not perceive any basis for holding the program to be subject to constitutional infirmity.

Turning to the second question, Article XI, Section 5 of the Michigan Constitution provides:

"To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within six months after the conclusion of each fiscal year the commission shall return to the state treasury all moneys unexpended for that fiscal year."

The powers of the Commission for the exercise of which the legislature is required to make such appropriation are specified by said section of the Constitution as follows:

"The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

* * *

"The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition or creation of a position shall have a right of appeal to the commission through established grievance procedures.

"The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service."

The Commission's position with respect to the proposed use of funds from its earmarked appropriation for the payment of such awards is stated as:

"Although the Constitution gives the Commission broad plenary authority, it does appear to place an outer limit on the purposes for which its earmarked appropriation may be spent.

"Although the Commission regulates conditions of employment and of personnel management, and hires staff to internally administer its regulations, it does not pay the salaries of personnel officers or clerks, the benefit of whose functions accrue exclusively to the particular principal departments where they are employed. Yet these functions are at least personnel and Civil Service related and conceivably, if felt required to fulfill its merit obligation, the Commission might do this under special circumstances.

"Awards for ideas which exclusively benefit the operations of a particular department have no such relationship.

"Specifically, for instance, one could question the legality of using these earmarked funds to pay an employee of the State Highway Department \$1,000 for an idea which improved durability and utilization of scraper blades used in snow removal which saved the Department of Highways an estimated \$50,000 annually in highway maintenance costs.

"On the other hand, there appears to be no question that our earmarked funds could be used to reward employees of any department for suggestions which improved state personnel procedures or the functions of the Department of Civil Service."

I am in substantial agreement with the Commission's position. Said moneys are appropriated to the Commission or the Department of Civil Service to enable it to exercise its powers. Presumably, the establishment of a suggestion award program is beneficial to the morale of the classified employees of the State. This could also be said of other benefits or programs by reason of which a classified employee may receive either direct or indirect benefit. In at least some instances such a program has been instituted and is being maintained as a result of action taken by the Civil Service Commission but the cost thereof defrayed by the individual departments. While a limited number of employees may benefit from the suggestion awards program by the payment to them of cash awards, the individual departments receive substantial benefit through resulting savings in the expense of their operations. Said reply from Civil Service states:

"The program processes an average of 1,200 suggestions each year, with an average of 20% adopted. Average first year net tangible savings since 1965 have exceeded \$100,000 a year."

The amount of the award payable for an accepted suggestion is based upon the estimated net savings resulting during the first year from the utilization thereof.

Of greater significance is the fact that the payment of cash awards does have the required relationship to the powers of the Commission. It

follows that the use of the earmarked appropriation for the payment of the cash awards of the suggestion awards program to employees of other departments would be for the purpose of exercising a power vested in the Commission by the Constitution. Therefore, your second question is answered in the affirmative.

FRANK J. KELLEY,
Attorney General.

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INSTALLMENT SALES:

The practice by certain retailers of charging the buyer with the "time price differential" (service charge) on the beginning monthly balance rather than the unpaid balance is illegal. The Michigan retail installment sales act requires that the "time price differential" (service charge) charged to the buyer be computed on the principal remaining unpaid after deduction of payments during the preceding period.

No. 4706

August 11, 1970.

Representative Thomas Guastello
House of Representatives
Capitol Building
Lansing, Michigan

In the following terms you have requested my opinion relative to certain widespread practices as they relate to the Michigan retail installment sales act:¹

"Specifically, I would like to know whether the practice, common to several large retailers in this state, of charging a 'time price differential' based on the customer's beginning balance every month, is legal under the provisions of the above statute.

"Does this practice violate those provisions calling for a time price differential to be assessed against ' . . . amounts unpaid thereunder from month to month . . . ?' (CL 445.862c)

"Does this practice violate either the maximum interest provisions of the Retail Installment Sales Act or the state usury laws?"

Stated in simplified hypothetical terms, your question can be posed as follows:

Suppose a consumer with a credit charge account purchases an item on the first day of the month for \$100.00 and makes no other purchase on his account for the remainder of that month. On the next month's billing date, this consumer receives a monthly statement showing a balance due of \$100.00 payable within 25 days. He thereupon makes a partial payment

¹ Act 224, P.A. 1966; M.C.L.A. § 445.851 et seq.; M.S.A. 1970 Cum. Supp. § 19.416(101) et seq.