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CONSTITUTION OF MICHIGAN: Art 11, § 5.

CIVIL SERVICE: Responsibility for personnel function.

STATE AGENCIES: Responsibility for personnel function.

The Civil Service Commission is specifically responsible for the personnel functions delineated in Const 1963, art 11, § 5. To carry out these functions, as well as its other functions, it receives, pursuant to the Constitution,

not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year.

It is for the legislature to decide whether a State agency may employ persons to perform personnel functions beyond those delineated in Const 1963, art 11, § 5.

Opinion No. 5041

September 13, 1976.

Hon. Earl E. Nelson
State Senator
The Capitol
Lansing, Michigan 48901

You have requested my opinion on the following questions which seek to determine whether the Civil Service Commission is required to utilize the annual appropriation to the commission mandated by Const 1963, art 11, § 5 to pay for personnel work presently being performed by employees of other State agencies:

- "1. What is the definition of the personnel function as intended by the 1963 Michigan Constitution?
- "2. What are the responsibilities of the Department of Civil Service in accordance with the definition as detailed in question 1?
- "3. What are the responsibilities of other state operating agencies in accordance with the definition as detailed in question 1?"

Because your questions are interrelated, they will be answered as a unit. At the outset it may be noted that the phrase "personnel function" does not appear in Const 1963, art 11, § 5. However, Const 1908, art 6, § 22,¹ did provide:

" . . . This commission shall supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment, and other property."

This language of Const 1908, art 6, § 22, was deleted from Const 1963, art 11, § 5 because the framers of the 1963 Constitution considered it be transitional material, necessary when the amendment was adopted but not required to be reproduced in the 1963 Constitution. Official Record, Constitutional Convention 1961, p 638.

Before addressing your questions, it is first necessary to determine how

¹ Added to the 1908 Constitution by initiative in 1941.

the framers of the 1963 Constitution construed the above-quoted, deleted portion of Const 1908, art 6, § 22. This is so because it is a recognized rule of constitutional construction that the meaning and intent of a constitutional provision must be determined by reference to the state of law or custom existing at the time the provision was adopted, *Walber v Wayne Circuit Judge*, 2 Mich App 145; 138 NW2d 772 (1966); *Schwartz v Secretary of State*, 393 Mich 42; 222 NW2d 517 (1974).

Thus, in order to ascertain who is responsible for personnel functions not specifically delineated in Const 1963, art 11, § 5, it is necessary to determine how the deleted provision of Const 1908, art 6, § 22, was construed and what personnel functions beyond those specifically delineated in Const 1908, art 6, § 22 were being carried out by the various state agencies at the time of its adoption.

After adoption by the people of the civil service amendment in 1941 and up to the adoption of the 1963 Constitution, numerous State agencies had personnel divisions and employed personnel officers. In 1961, for example, 30 of the 80 operating state agencies designated classified employees as occupying positions in the Personnel Divisions of said agencies. In all, as of October 17, 1961, there were 150 employees performing personnel work within operating State agencies other than the Department of Civil Service (memorandum from Norval Trimpe to Franklin K. DeWald, State Personnel Director, October 17, 1961).

This state of affairs existed despite the fact that the presence of personnel divisions within operating State agencies was of concern to the legislature as early as 1959. The 1959 House of Representatives appropriations bill, Enrolled House Bill No. 108, sought to deduct the aggregate annual salaries for personnel administrative officers employed by the operating State agencies from the constitutionally-mandated appropriation to the Civil Service Commission. In I OAG, 1959-1960, No 3435, p 134 (July 9, 1959), however, one of my predecessors as Attorney General held that this attempt to reduce the constitutionally-mandated 1% civil service appropriation violated Const 1908, art 6, § 22. The opinion stated on page 137:

"The portion of the Enrolled House Bill in question here, deducts from the 1% civil service appropriation the * * * cost of personnel administrative officers who appear as employees in the following agencies whose salaries are charged against the general fund."

"The positions listed by the legislature are *not* among those excepted and exempted from civil service by Article VI, Sec. 22, 1% of the payroll of such unclassified employees having already been deducted in the bill.

"The clear meaning of Article VI, Sec. 22 having been violated, it is the opinion of this office that that portion of Enrolled House Bill No. 108 beginning with 'Less cost of personnel administrative officers

* * * and continuing through 'Total * * * \$254,816.00' is unconstitutional."²

In 1962, the legislature again sought to charge the salaries of personnel officers employed by the various State departments to the Civil Service Commission. The appropriation bills passed by the Senate in that year provided:

"None of the appropriations made under the provisions of this act for salaries and wages for classified positions established by the Civil Service Commission shall be used to pay salaries and wages for employees performing personnel administrative services, which services by virtue of Section 22 of Article VI of the state constitution are the responsibility of the Civil Service Commission and are to be paid from appropriations made to the Civil Service Commission. . . ."

OAG, 1961-1962, No 4080, p 445 (July 16, 1962), held this provision to be unconstitutional.

By way of recapitulation, at the time Const 1963, art 11, § 5 was adopted, numerous State departments were employing personnel officers and paying for them from appropriations made to the department by the legislature to cover the salaries of its employees. At that time, in Opinion No. 3435 issued on July 9, 1959 and in reliance upon the predecessor to Const 1963, art 11, § 5 (Const 1908, art 6, § 22), the Attorney General had declared as unconstitutional efforts by the legislature to shift the salary-paying responsibility for such employees from departmental appropriations to the Department of Civil Service and the Civil Service Commission.

It may be presumed, therefore, that the framers of the 1963 Constitution were aware of the existence of personnel officers employed by state agencies and paid for out of departmental appropriations. Nothing in Const 1963, art 11, § 5, or in the constitutional convention discussion of this section indicates that the framers of the Constitution desired to change the existing arrangement.

² The statutory provision under consideration provided:

"CIVIL SERVICE COMMISSION

"Constitutional provision of 1% on \$170,731,305.53 total payroll for fiscal year 1957-58	\$ 1,707,313.00
"Less 1% on \$18,240,331.15 payroll of unclassified employees	182,403.00
"Less 1% on \$47,212,850.00 payroll of classified employees paid from restricted funds and other sources as follows: " * * *	
"Sub-total deductions from restricted funds and other sources	\$ 472,129.00
"Less cost of personnel administrative officers who appear as employees in the following agencies whose salaries are charged against the general fund: " * * *	
"Total	\$ 254,816.00
"Sub-total deductions	\$ 909,348.00
"General Fund Total	\$ 797,965.00"

The duties and responsibilities of the Civil Service Commission with respect to personnel are stated in the fourth paragraph of Const 1963, art 11, § 5, 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."

This paragraph, however, does not constitute a complete and total definition of all of the personnel functions that may be necessary if the various agencies of the State are to operate in an efficient manner. Thus, it may be assumed, the legislature may authorize and assign additional personnel duties and responsibilities to the various appointing authorities.

The nature and extent of these additional personnel responsibilities are subject to individual and legislative judgment. One view may be gleaned from a report of the Civil Service Study Commission commissioned by the governor and issued in 1936.³ In that report the Commission stated:

"The objectives of good personnel administration are two-fold: to bring into the service the most able persons that can be found; and to so order their official existence that their work is of the utmost value to the service . . . To accomplish its first purpose, it not only gives public notice of the existence of vacancies to be filled but searches out good prospects who might not otherwise apply, attempting to maintain the largest possible reservoir from which to draw. It examines the applicant's mentality, physical condition, aptitude, knowledge, experience, and past record so that it may forecast accurately how he will perform if admitted into the service. It selects the best of the persons it has been able to find and submits them, together with all of the knowledge it has gained of each, to the responsible administrator for his choice of those who are to come into the service.

"After the applicants have become employees, personnel administration faces the more difficult of its tasks—the attainment of its second objective. To this end, it first classifies all of the positions, including in each group all of those substantially similar in duties and responsibilities, prescribing for each group the minimum qualifications for filling the positions in it, and designating the lines of promotion to and from each. When its stock has thus been inventoried and specifications for replacements established, it fixes maximum and minimum salary

³ The report of the Civil Service Study Commission formed the central basis for 1937 PA 346 which was later incorporated into the Constitution by 1908 Const, art 6, § 22, the report of that Study Commission must be viewed as a central instrument in determining the personnel responsibilities of the appointing authorities, vis-a-vis, the Civil Service Commission and the Department of Civil Service.

rates for each class of position so that employees may be compensated fairly and uniformly on the basis of work performed, the cost of living, and the value of their services. It provides for the transfer of employees so that those not effective in their present assignments may be placed where they will be, that peak loads of work may be met without employing additional persons, for encouragement and reward of initiative by the filling of vacancies by promotion whenever possible, for the periodic evaluation of employee performance by means of service ratings, for the conduct of comprehensive training programs designed to improve the quality of the employees' work, for the observance of uniform hours of work and vacation and sick leave allowances, for the formal and judicious use of disciplinary measures, and for the maintenance of adequate personnel records. Finally, it assures to a discharged employee the right to know the reasons for his dismissal and to be heard in his own defense, at the same time avoiding interference with the exercise of executive responsibility by the constituted authorities.

"It was with these concepts of good personnel administration that the existing practices were reviewed and are reported in the following sections." [Report of the Civil Service Study Commission, pp 1920, 1936]

The above-quoted language of the report defines, as well as it may be possible to do, the elusive concept of what constitutes the "personnel function." It establishes two major objectives for personnel administration: (1) to bring into the service the most able employees, and (2) to provide a framework which insures that the State obtains the full value of the services of such employees.

The first objective is one which is primarily the responsibility of the Civil Service Commission under Const 1963, art 11, § 5. It is the Commission's responsibility to determine the qualifications for the various positions within the State service and to examine and evaluate applicants for State service. The appointing authorities also may have a role in this aspect of the personnel function. However, this role, if the legislature funds it, is limited to the recruitment of potential applicants for positions within the various appointing departments and to selecting employees from lists prepared by civil service. It must be noted, however, that even absent legislative approval, the Civil Service Commission cannot perform this function adequately unless it is able to have the advice and in some instances the participation of the various departments. Thus, even with respect to the first function, the appointing authorities often must play a role, often a major role, and if unable to do so the goal of bringing into the classified service the most able employees will suffer.

The second function enumerated by the study commission is one in which the Civil Service Commission and the various appointing authorities must perform functions which complement each other. Thus, for example, Const 1963, art 11, § 5 gives the Civil Service Commission supervision over the State payroll by charging it with the responsibility of approving or disapproving "disbursements for all personal services." However, Const

1963, art 11, § 5, does not mandate that the Civil Service Commission staff prepare and calculate payrolls, for example, even though that task is a basic part of state "disbursement for all personal services."

Similarly, Const 1963, art 11, § 5, assigns to the Commission the responsibility and duty to "regulate all conditions of employment in the classified service." "Condition of employment" is an extremely broad term and refers to any aspect of employment which has an effect upon the occupational "well being" of a classified State employee, see e.g., OAG 1969-1970, No 4709, p 169 (September 4, 1970); *Carroll v Newberry State Hospital*, 15 Mich App 18; 165 NW2d 872 (1968); *MacLellan v Dept of Corrections*, 373 Mich 448; 129 NW2d 861 (1964).

In OAG, 1969-1970, No 4709, *supra*, I was called upon to determine the extent to which an appointing authority may enter into and execute an agreement with representatives of employee organizations. In resolving this issue it was necessary to discuss the allocation of power to deal with conditions of employment between the Civil Service Commission and the appointing authority. In that opinion I stated:

"The role of the appointing authority is that of carrying out the executive and administrative functions pursuant to statutory or constitutional powers. Essentially it is the agency for which the employee works. *Eliason v. State Roads Commission* (Md. 1963), 189 A2d 649, 651, and these functions of the appointing authority necessarily involve directing and controlling the employee's activities. However, in carrying out its mission, the appointing authority is subject to the power of the civil service commission to 'make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.' (Article XI, Section 5)

"Thus the determination of where and how the employee's activity is to be carried on is within the prerogative of the appointing authority. . . ." [OAG, 1969-1970, No 4709, *supra*, at p 172]

The above-discussed judicial decisions and opinions of the Attorney General made it clear that the appointing authority has under the Constitution a role separate from civil service in delineating the "conditions of employment" of employees. If the appointing authority has a role with respect to "conditions of employment," then the appointing authority may constitutionally employ personnel officers, if the legislature funds such employees, to insure that this role is properly performed.

Thus, unless prohibited from doing so by the legislature, an appointing authority may employ personnel if funds for that purpose are appropriated to perform that aspect of the personnel function which the appointing authority may constitutionally perform. The portion of the personnel function which may be performed by the appointing authority includes, but is not limited to, the following: participation in recruitment, advice to the Civil Service Commission on qualifications for positions, processing of grievances, preparation of the agency's payroll, in-service training of employees, the establishment or abolition of positions, evaluation of employees, selection of employees for positions based upon the eligibility lists provided

by the Department of Civil Service and the recommendation of employees for promotion.

However, since these personnel functions of appointing authorities, if they are to be performed at all, must be financed by legislative appropriation in addition to that constitutionally appropriated to the Civil Service Commission, the legislature has the discretion to determine how many of these activities are to be carried out, at what level, and which activities are to be eliminated completely by the various state agencies.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTION OF MICHIGAN: Art 4, § 25.

TAXATION: Cooperation of state licensing agencies in collecting taxes.

There is no violation of the constitutional provision requiring that a section or sections of an act altered or amended be reenacted and published at length, Const 1963, art 4, § 25, where the later-enacted statute is complete in itself and does not confuse or mislead.

A provision in the Single Business Tax Act authorizing the revenue commissioner to utilize the services of other agencies of state government, including the withholding of state licenses or permits, is a statutory provision that is complete in itself and does not confuse or mislead and, therefore, does not violate Const 1963, art 4, § 25.

Opinion No. 4991

September 16, 1976.

Ms. Beverly J. Clark, Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926

You have inquired:

“Does Section 92 of 1975 PA 228 violate Article IV, sections 25 and 36 of the Michigan Constitution in that it purports to revise, alter or amend the various licensing acts and attempts to generally revise laws by requiring a department, upon request, to withhold a license otherwise required to be issued?”

The Single Business Tax Act, 1975 PA 228; MCLA 208.1 *et seq*; MSA 7.558(1) *et seq*, is an act intended to implement a comprehensive tax on all business entities in the State of Michigan. The act accomplishes what its title indicates it intends—provides one single tax form for business entities. 1975 PA 228, *supra*, § 92 provides:

“The commissioner may utilize the services, information, or records of any other department or agency of the state government, including the withholding of state licenses or permits, in the performance of its duties hereunder, and other departments or agencies of the state gov-