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**CIVIL SERVICE: Appointing Authorities.**

The civil service commission is the exclusive state agency for dealing with state classified employees or their representatives with respect to personnel transactions and conditions of employment. Appointing authorities have control over methods and means of carrying out the agency's mission and may create or abolish positions for reasons of administrative efficiency.

The civil service commission may, by rule or regulation, delegate to appointing authorities the authority to deal with and execute agreements with employee organizations with respect to personnel transactions and conditions of employment.

No. 4709

September 4, 1970.

Dr. E. G. Yudashkin  
Director  
Department of Mental Health  
Lewis Cass Building  
Lansing, Michigan

You have requested my opinion on the following question:

"In the exercise of his supervisory control over the activities of state classified employees, to what extent may an appointing authority enter into and execute an agreement with representatives of an employee organization?"

As the question involves consideration of the respective scope of authority and responsibility of the state civil service commission and appointing authorities vis-a-vis state classified employees, the response must necessarily involve an interpretation of Article XI, Section 5 of the Michigan Constitution of 1963, which, in pertinent part, states:

" \* \* \*

"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.*

" \* \* \*"

(emphasis added)

Civil service systems, pursuant to which appointments to public employment are required to be made on the basis of merit and fitness, are intended to increase the efficiency of public service by abolishing the "spoils system." 67 C.J.S. "Officers" § 34, p. 162. The concept was introduced in Michigan by legislative enactment of Act 346, P.A. 1937, but two years later the legislature watered down its effect by passing Act 97, P.A. 1939, which increased the number of exempt positions. As a result of the threatened reintroduction of the "spoils system" to the state, the people exercised their power to amend the state constitution and adopted the civil service amendment, Article VI, Section 22, to the Michigan Constitution of 1908 which took effect January 1, 1941.

The delegates to the convention that produced Michigan's current basic law were familiar with this background and were also familiar with the case of *Kunzig v. Liquor Control Commission* (1950), 327 Mich. 474.

*Kunzig* involved a classified civil service employee whose position had been abolished by the appointing authority, the liquor control commission. The Michigan court first noted that it was called upon "to define the respective powers of the liquor control commission and the State civil service commission as applied to the plaintiff, under the 2 constitutional amendments by virtue of which said commissions were created." (p. 476) The appointing authority's view was that it had the right to abolish the classified civil service position for its own reasons and that the civil service commission did not have the authority to "step over the line of demarcation between personnel problems and administrative problems and invade the administrative field." (p. 478) The majority of the members of the court held that the civil service commission may exercise authority over such removals from the state civil service. Justice Dethmers, however, vigorously dissented, saying:

"I am not in accord with the view that the power of an appointing authority to create or abolish a position under its jurisdiction in the classified civil service is, by the civil service amendment \* \* \*, made subject to the approval of the \* \* \* [civil service commission]. (p. 484)

"\* \* \* Inherent in such veto power is the power to control administrative policies. \* \* \*. (p. 484)

"\* \* \* if \* \* \* appointing authorities may not so reorganize, assign functions and duties to their employees or formulate policies with the results indicated above, without \* \* \* [civil service commission's] consent, then, indeed, has \* \* \* [civil service commission] been enthroned as supreme arbiter on questions of administrative policies, practices and procedures." (p. 487)

The import of the *Kunzig* case did not escape the attention of the framers of the 1963 Michigan constitution. On January 18, 1962 the committee on executive branch offered Committee Proposal 22 which constituted a revision of Article VI, Section 22 of the 1908 Constitution. One of the significant changes from the 1908 document was the addition of the following:

"The executive may create or abolish positions for reasons of administrative efficiency without the approval of the commission. No

removals, demotions, appointments or promotions in the state civil service shall be made for partisan, racial or religious considerations. Nor shall the creation or abolition of positions be made for such considerations." (Constitutional Convention 1961, Official Record, Vol. I, p. 637).

The reason for this change was explained by the committee as follows:

"Under the authority of the case of Kunzig vs. Liquor Control Commission, 327 Michigan 474, all changes in numbers and types of positions are subject to the advance approval of the civil service commission. As it now stands under the Kunzig case, state agencies must demonstrate that the desired abolition of a position is not for any racial, religious or partisan reason. The effect of the new language is to allow the administrator greater leeway in the establishment or abolition of positions. \* \* \*."

(Constitutional Convention 1961, Official Record, Vol. I, p. 639).

Later the word "executive" was stricken and the words "appointing authorities" inserted so that the current pertinent part of the language of Article XI, Section 5, reads "The appointing authorities may create or abolish positions for reasons of administrative efficiency, \* \* \*." (Constitutional Convention 1961, Official Record, Vol. I, p. 651).

Additional pertinent portions of the constitutional debates appear in the official record. For example, the following statement of Mr. John Martin is indicative of the concerns of members of the convention and of how they hoped to cope with them:

"Believe me when I say that spoilsmanship is a continuing threat. It is currently practiced in modified form at the county level in Michigan counties and in many of our cities. Inevitable pressure for patronage is constantly on people in the state's public life in both the executive and legislative branches of government and in both political parties. It comes in obvious and direct forms and in exceedingly devious forms. It comes from legislators who want constituents hired or promoted. It comes from agency heads who, for various reasons, want to get around the rules. It comes from politicians who constantly fight to lower minimum standards we set on education and experience for applicants for state jobs. It comes from 100 different sources that would both surprise and amaze you.

"The language of our present constitution affords Michigan the strongest protection of any of the states against these pressures. \* \* \*

"There are 3 areas where political considerations on the part of agency heads inclined to use them might develop. They are in the selection from the top 3 names on an employment list, the so called "rule of 3", in provisional appointments made when no adequate list is available; and, conceivably, in the promotional examination process. But we have an appeal process set up to guard against abuse, and it is equally true this system severely limits such considerations, yet still leaves the elected official or agency head some voice and latitude in the selection of personnel and, in the case of provisional hires, if political considerations are used by an agency head, the system also

makes sure merit is involved because the candidate must meet minimum requirements to even get a temporary appointment and must, finally, face competitive examination.'"

(Constitutional Convention 1961, Official Record, Vol. I, p. 662).

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. For example, in *Carroll v. Newberry State Hospital* (1968), 15 Mich. App. 18, the medical superintendent of a state hospital issued orders to classified civil service employees concerning their work assignment pursuant to this statutory authority under Section 5 of Act 151, P.A. 1923; M.C.L.A. § 330.15; M.S.A. 1969 Rev. Vol. § 14.805. These orders were violated and the superintendent suspended these employees. They thereupon appealed their suspensions to the state civil service commission which affirmed the action of the superintendent and the court sustained the findings of the commission. Nevertheless, implicit in this decision is the power of the civil service commission to supersede the action of the superintendent since it is granted the constitutional authority "to regulate all conditions of employment" in the classified service. Where, as in *Carroll*, the appointing authority issues its order concerning working conditions, these orders must be presumed to be valid and must be complied with until the commission has superseded such action in accordance with lawful procedures.

Turning to the issue before us, the views of the Michigan Supreme Court on the respective powers of the civil service commission and appointing authorities vis-a-vis classified employees can be gathered from a perusal of *MacLellan v. Department of Corrections* (1964), 373 Mich. 448. In this case the plaintiff, who had civil service status, was discharged by the corrections commission for refusing to cease engaging in supplementary employment. The civil service commission affirmed the discharge and this order was upheld by the supreme court. Important for our consideration is the fact that the anti-moonlight policy was established by the civil service commission and this policy prohibited any full-time outside employment, but permitted part-time outside employment with the written consent of the appointing authority. Thus it is clear that the civil service commission has ample power to establish work rules relating to supplementary employment and further power to delegate enforcement and implementation to appointing authorities.

It is clear, therefore, that although the initial determination of employment conditions is the responsibility of the appointing authority, the civil service commission, established by Article XI, Section 5, has plenary

authority to deal with employees, employee representatives and collective bargaining agents. It has promulgated its policy with respect to this subject on May 23, 1966 (see Appendix A) and the exercise of this authority is within the scope of its powers. Thus, by its own rules, only the civil service commission may enter into collective bargaining agreements with state classified employees and appointing authorities may not do so without consent of civil service.

FRANK J. KELLEY,  
*Attorney General.*

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL SERVICE

APPENDIX A

May 23, 1966

TO: ALL STATE EMPLOYEES  
FROM: Franklin K. DeWald, State Personnel Director  
SUBJECT: New Revised State Employee Relations Policy

This is your personal copy of the new and improved statement of the Commission's relations with employees and employee groups. Keep this with your copy of the Civil Service Rules and your copy of your Departmental Grievance Procedure. Altogether, these regulations express the desire of the Commission along with all classified employees to maintain the Michigan Civil Service Commission tradition of leadership, service and equitable employee relations.

The original policy statement was adopted on December 1, 1964 after numerous consultations and discussions with the individual employees, employee organizations, personnel officers, and appointing authorities. Recently, in connection with the annual review of its policy the Commission published certain proposed changes as a foundation for discussion. Again, comments were received from employees, employee groups, and management. Many of the comments brought about changes in the Commission's proposal and were incorporated in the present document.

If you compare this new statement with the old, you will note that the modifications for improvement involve Article V, Sections 3 and 7, and Article VI, Sections 3, 4, and 7. Questions may be discussed with your supervisor, your personnel officer, or the Civil Service Department.

STATE EMPLOYEE RELATIONS POLICY  
AMENDED APRIL 26, 1966

I. *PURPOSE*

The objectives of the Employee Relations Policy in the Michigan State Classified Service are:

1. To attract and retain competent employees for State Government as the best assurance of the high quality of service to the citizens of Michigan.
2. To assure the effectiveness of their service by providing an opportunity for employees to meet with appointing authorities or the Department of Civil Service to exchange views and opinions on policies and proce-

dures affecting the conditions of their employment, subject to the Constitution, law and requirements of the public service.

3. To protect the right of every employee to fair and impartial treatment regardless of membership or non-membership in an employee organization and to assure to every citizen of the State of Michigan the right to apply for employment with the State Service without prejudice.
4. To assure strict compatibility of all employee relations policies throughout the State Classified Service with the constitutionally required merit principle of employment and with the constitutional responsibility of the Civil Service Commission for its administration and with the responsibilities of the appointing authorities to provide services and protection to the public.

## II. DEFINITIONS

1. *Agency*: Any office, department, board, commission, institution, or other administrative instrumentality required by the Constitution or by law to select and administer its personnel under the Civil Service provisions of the Constitution.
2. *Appointing Authority*: Single executives heading principal departments or the chief executive officer of each principal department headed by a board or commission, or those officials delegated by them as being responsible to administer the personnel functions of the department, board or commission.
3. *Employee*: For purposes of this policy statement, an "employee" is any person who holds a position in the State Classified Service.
4. *Employee Organization*: Any lawful association, organization, or union composed of employees in the Michigan State Classified Service, having as its primary purpose the improvement of conditions of employment; but not including any organization (1) which asserts the right to strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike, or (2) which advocates the overthrow of the constitutional form of government in the United States or in Michigan, or, (3) which discriminates with regard to the terms or conditions of membership because of religion, race, color, national origin, or political partisanship.

## III. BASIS AND IMPLEMENTATION OF THE EMPLOYEE RELATIONS POLICY

The provisions of the Constitution with respect to the State Classified Service and the Rules of the Civil Service Commission constitute the basis of the State Employee Relations Policy. The Policy shall be implemented by regulations issued and procedures required by the Civil Service Commission for the entire classified service and by policies and regulations adopted by the various appointing authorities pursuant to authority delegated to them by the Civil Service Commission.

## IV. APPOINTING AUTHORITIES: RIGHTS, DUTIES AND RESPONSIBILITIES

Each appointing authority shall exercise the following rights, duties and responsibilities, respecting employee relations in accordance with the Constitution, applicable laws, and Civil Service Rules:

1. (a) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees,

- (b) to relieve employees from duties in accordance with Civil Service Rules,
- (c) to establish standards of job performance and to require employees to meet the standards,
- (d) to make final decisions on conditions of employment designated by the Civil Service Commission to lie within the discretion of the appointing authorities,
- (e) to advise the Civil Service Commission with respect to modification or revision of the Civil Service Rules, this Employee Relations Policy Statement, the annual pay rate proposals and grievance procedures.

Provisions of this policy statement shall not be construed to extend to the following responsibilities of appointing authorities:

- 2. (a) the maintenance of the efficiency of the agency operations entrusted to them,
- (b) the determination of the methods, means and personnel by which such agency operations are to be conducted,
- (c) the maintenance of exclusive administrative jurisdiction over the agency's mission, its budget, its organization,
- (d) whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

#### V. *THE INDIVIDUAL EMPLOYEE: RIGHTS, DUTIES AND RESPONSIBILITIES*

Each individual employee shall exercise the following rights, duties and responsibilities in accordance with the Constitution, applicable laws, and the rules and regulations of the Civil Service Commission and his appointing authority:

- 1. to perform his assigned duties to the best of his ability in order to render the most effective service to the people of Michigan;
- 2. to join or refrain from joining an employee organization, and to hold office and actively participate therein;
- 3. to be free from interference, coercion, restraint, discrimination or reprisal on the part of his appointing authority, his supervisor, other employees, or employee organizations, with respect to his membership or nonmembership or activity in a recognized employee organization or with respect to his participation in forms of political activity permitted under civil service political activity regulations, and the federal Hatch Act (where applicable);
- 4. to fair and impartial treatment by his appointing authority;
- 5. to respect on the part of his appointing authority for his dignity and integrity as an individual;
- 6. to consult with the staff of the Department of Civil Service;
- 7. to be heard on conditions of employment by his appointing authority or by a representative authorized to speak for the appointing authority;

#### VI. *EMPLOYEE ORGANIZATIONS: RIGHTS, DUTIES AND RESPONSIBILITIES*

- 1. *Recognition:* The Civil Service Commission, as a public agency charged by the Constitution with the regulation of all conditions of employment, and with responsibility for the public interest of all citizens equally,

will grant recognition to employee organizations coming within the definition stated in this Policy and submitting to the Department of Civil Service (1) a written request for recognition, (2) a roster of its officers and official representatives, (3) and a copy of its objectives, its constitution and by-laws and accepting the responsibilities set forth in this statement. Recognition shall continue so long as such organization satisfies the criteria for such recognition. Recognition will only be extended to those organizations which have a substantial and stable membership of employees of the agency.

2. *Representation:* Duly constituted representatives of each recognized employee organization shall have the right to represent its organization in conferences with the Department of Civil Service or its representatives, and with their respective appointing authorities. They shall also have the right to represent their members, when requested by such members, in grievances in accordance with the grievance procedures.
3. *Conferences with Department of Civil Service:* The Department of Civil Service shall provide reasonable opportunity for conference with duly constituted representatives of recognized employee organizations prior to modifying or revising this Employee Relations Policy Statement, the Civil Service Rules, minimum standards of Grievance Procedures, or the Annual Pay Rate Proposals. An employee organization may request a conference with the Department of Civil Service on any conditions of employment provided that the provisions of Article VI, Section 4, where applicable, have been pursued in good faith. Such conferences shall be on official time.
4. *Conferences with Appointing Authorities:* Appointing authorities shall provide reasonable opportunity for conference with duly constituted representatives of employee organizations recognized by the Civil Service Commission, on conditions of employment designated by the Civil Service Commission, or to be within the discretion of the appointing authorities. If the appointing authority delegates this responsibility, it shall be to a representative authorized to speak for him. Such conferences shall be on official time.
5. Decisions made by appointing authorities within a reasonable time following such conferences shall be made accessible to all the agencies' affected employees in written form.
6. Solicitations of membership, or other internal employee organization business shall be conducted during the non-duty hours of all employees concerned.
7. A classified employee who accepts employment with a recognized employee organization shall be entitled to a leave of absence for the period of such employment. However, after the expiration of three years: (1) the vacancy may be filled by permanent appointment and (2) upon request for restoration to duty, the employee's name shall be placed on an appropriate layoff list (or lists). On leaves granted prior to June 29, 1965, the three year period of standard restoration rights shall extend through June 28, 1968.

## VII. *RECOGNIZED EMPLOYEE ORGANIZATIONS: USE OF STATE FACILITIES*

1. *Meeting Places:* Recognized employee organizations shall be granted the use of State facilities for meetings composed of State employees provided such meetings are outside regularly scheduled working hours



for the group which is meeting and provided space is available without interfering with agency needs.

2. *Use of Bulletin Boards:* Recognized employee organizations shall be provided with a reasonable amount of space for posting official organization bulletins. Prior approval of subject matter of the material for posting shall be obtained from the appointing authority or his representative.
3. *Distribution of Material:* When approved by the appointing authority, material may be distributed by a recognized employee organization to its members or to all employees through normal agency channels of communication.
4. *Dues Collections:* Recognized employee organizations will be provided with the payroll deduction system for the collection of dues.
5. *Improper Use:* State facilities shall not be used for partisan political purposes.

#### VIII. *GRIEVANCE PROCEDURE*

1. The Civil Service Commission requires the establishment and use of a formal, written grievance procedure by each agency which must conform throughout the service with minimum standards established by the Civil Service Commission.
2. Any deviation from such standards due to unique situations within an agency must be requested of and approved by the State Personnel Director.
3. The grievance procedure shall be available to every employee without fear of reprisal and regardless of membership or non-membership in an employee organization.
4. Each employee shall be permitted to represent himself or to authorize a representative of his own choosing to present his grievance in accordance with the grievance procedure.

#### IX. *POLITICAL ACTIVITIES*

1. As a condition of employment, the Civil Service Commission in its rules restricts the political activities of employees for the purposes of protecting the employee from political exploitation and from interference with his right of elective franchise, and of providing the citizens of the State with a career staff ready to serve the elected leadership of any political party with equal fidelity. The Civil Service Commission maintains a statement of authorized and prohibited political activities for the information and guidance of employees and appointing authorities.
2. Authorized political activities of whatever nature shall be voluntary on the part of the employee. The Civil Service Commission will protect the employee from coercion or reprisal by his appointing authority, his supervisor, other employees, or employee organizations with respect to such permitted political activity.

#### X. *ACCEPTANCE OF GIFTS*

No employee shall accept loans, gifts of money or goods, services or other proffered arrangements for personal benefit under any circumstances directly or indirectly involving influence upon the manner in which he performs his work, makes his decisions, or otherwise discharges his duties as a State employee.

**XI. SUPPLEMENTARY EMPLOYMENT**

1. No employee shall hold a full-time job, or its equivalent, in addition to his regular full-time State employment.
2. Supplementary employment is not encouraged but is permitted under the following conditions:
  - (a) That the additional employment must in no way conflict with the employee's hours of State employment, or in quantity or interest conflict in any way with the satisfactory and impartial performance of his State duties.
  - (b) That he secure the written approval of the appointing authority of his agency before engaging in any supplementary employment.
  - (c) That he keep the appointing authority informed of contemplated changes in his supplementary employment.

**XII. EQUAL OPPORTUNITY**

The provisions of this Employee Relations Policy shall apply to all employees regardless of religion, race, color, national origin, or political partisanship. This principle shall be applicable in all phases of personnel administration.

**XIII. COMMUNICATION**

1. Each employee shall be provided with a copy of the Civil Service Rules, this Employee Relations Policy Statement, and the grievance procedure of his agency for which he shall sign a receipt. Implementing regulations of the Department of Civil Service and of appointing authorities relating to conditions of employment shall be in a form readily accessible to employees.
2. Actions of the Department of Civil Service, directives to appointing authorities, decisions in grievance cases, and decisions of appointing authorities, which interpret this Employee Relations Policy, shall be communicated to the appointing authorities, to the employees, and recognized employee organizations.

**XIV. AGENCY UNIFORMITY AND IMPLEMENTATION**

1. *Uniformity:* The Civil Service Commission encourages service-wide uniformity of conditions of employment subject to the unique needs of the various administrative agencies and variety of conditions of employment with each administrative agency.
2. *Deviations:* Any deviations from this policy which are required to fit the peculiar needs of any agency shall be submitted to the State Personnel Director for approval.