



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 13, 1977

ATTORNEY GENERAL OPINION NO. 77-228

Mr. Darrell O. McNeil
Attorney
Department of Administration
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Civil Service Commission--Jurisdiction--Local Units

Synopsis: The State Civil Service Commission has no jurisdiction to hear appeals of former employees of the Lyon County-Emporia City Joint Board of Health from the termination of their employment by said board as of October 31, 1976, because such persons were not members of the state classified service, and the jurisdiction of the Commission extends only to persons in that service.

* * *

Dear Mr. McNeil:

You inquire concerning the jurisdiction of the State Civil Service Commission to entertain appeals by employees of the Lyon County-Emporia City Joint Board of Health, from their termination from their employment by that board as of October 31, 1976.

The State Civil Service Commission is created by K.S.A. 1976 Supp. 75-2928a. Its jurisdiction is prescribed by K.S.A. 1976 Supp. 75-2929 thus:

"The state civil service commission shall hear appeals taken to it pursuant to K.S.A. 1971 Supp. 75-2940 and 75-2949 . . . and shall

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conduct hearings and pass upon complaints by or against any officer or employee in the classified service for the purpose of demotion, suspension, removal or dismissal of such officer or employee, in accordance with the provisions of this act"

Its jurisdiction extends, thus, to persons in the classified service of the Kansas civil service as created by K.S.A. 1976 Supp. 75-2935(2).

The joint board of health is a local public health unit, authorized by K.S.A. 65-205. In order to become eligible for certain federal grant-in-aid funds, the Lyon County-Emporia City Joint Board of Health was required to place its employees under a federally approved personnel merit system. Title 42, U.S.C.A., § 246 (b) (2) (D) requires that funds authorized to be appropriated thereunder shall be made available to states which have approved state plans for the provision of public health services, which plan must "provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis) as are found by the Secretary to be necessary for the proper and efficient operation of the plan. . . ." Title 45, C.F.R., §§ 70.1 - 70.16 amplifies these requirements. You advise that the Lyon County-Emporia City Joint Board of Health did apply for and began receiving federal funds in 1955; however, the last grant terminated on June 30, 1973. In order to enable this and other local bodies to become eligible for federal moneys under this program, the Division of Personnel provided the services and protection of the state civil service system to the employees of this and other local units, the state civil service system as implemented by the Division of Personnel having been recognized as a federally approved merit personnel system. K.S.A. 1976 Supp. 75-3747 provides in pertinent part thus:

"(a) The secretary of administration shall:

* * *

(4) when the services of the division of personnel are required, enter into agreements with the secretary of health and environment whereby the costs incurred in connection with the assignment of positions to classes and with the examination, selection, promotion, transfer or discipline of employees

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in city or county units under the jurisdiction of the secretary of health and environment, shall be paid in whole, or in part, from moneys granted by the federal government for the administration of state laws and state plans administered by the secretary of health and environment"

Although the services of the Division of Personnel were extended to provide a merit system for employees of the joint board of health involved here, you advise that no agreements were entered into between the Secretary of Health and Environment and the Division, or between the Division and the joint board of health, to provide reimbursement to the Personnel Division for its services in this regard.

In action taken by the joint board of health in October, 1976, all of its six employees were requested to resign, and advised that if they did not do so, they would be terminated nonetheless as of October 31, 1976. Four of these individuals were subsequently reemployed by the joint board. Two individuals who seek to appeal from that termination were not reemployed, however. One of the appellants had been employed by the joint board for several years, and had been given permanent status as a sanitarian-technician on July 1, 1962. The other was employed on January 10, 1974, as a clerk typist II, and received permanent status on July 9, 1974.

You advise that with the expiration of federal funding as of June 30, 1973, the board did not take any formal action to declare that its employees were no longer covered by the state personnel civil service system. In a letter to the State Department of Health and Environment in November, 1976, the joint board indicated that it considered that its employees had not been covered by the state's merit system as of June 30, 1974, one year after federal funds expired. As a factual matter, you indicate that various documents presented to the Civil Service Commission indicate that the joint board took certain personnel actions under the state's merit system after the end of federal funding on June 30, 1973, such as giving one employee permanent status as described above and giving a favorable civil service rating to another employee, the joint board presented statements to the Commission from other employees that they understood that after June 30, 1973, the office was no longer under the state civil service system and was operating under the county personnel policies. These statements also tended to indicate that both of the appellants shared that understanding.

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It is unnecessary here to resolve the factual questions of the employees' beliefs and understanding regarding their coverage under the state merit system. In addition, in my judgment, the question of any action or inaction by the joint board either adopting or abandoning the state merit system does not affect the issue involved here. The jurisdiction of the State Civil Service Commission is fixed by statute. Under K.S.A. 1976 Supp. 75-2929, it extends only to persons in the classified service of the state. Employees of the Lyon County-Emporia City Joint Board of Health are not employees of the State of Kansas, and were not during the period of time the joint board received federal grants-in-aid. Under K.S.A. 1976 Supp. 75-3747(4), the services of the Division of Personnel may be made available to local units to extend the merit procedures of the Division regarding position classification, the examination, selection, promotion, transfer or discipline of employees of the local unit. Utilization of the state merit procedures has been deemed to comply with 42 U.S.C.A. § 246(2)(D) and 45 C.F.R. §§ 70.10 et seq., regarding position classification, recruitment, employee selection and appointment, career advancement, and layoffs and separation. Although the administrative services of the Division of Personnel are thus authorized by statute to be offered to the joint board, its employees do not thereby fall within the jurisdiction of the State Civil Service Commission unless they are in fact state employees. Clearly, in this case, the appointing authority was not the Secretary of Health and Environment, but the joint board, and the compensation plan applicable to these employees was not the state plan, but that adopted by the joint board. Only the joint board was authorized to appoint, promote, suspend, or terminate any of these employees, and perforce, they remained employees of the joint board, and not of the state.

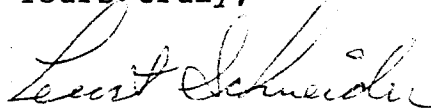
Obviously, without resort to an impartial body charged with administering the merit system, the procedures afforded by the system itself may count for little. The State Civil Service Commission is that body for employees of the state classified service. For employees of local units, however, to assure the protection of the state merit system where it is desired to apply, it is necessary that a comparable body be constituted at the local level to administer the merit system, and to hear appeals of persons who deem themselves aggrieved under the rules of the state merit system.

Thus, I must conclude that the State Civil Service Commission has no jurisdiction to hear the appeals of these former employees

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of the Lyon County-Emporia City Joint Board of Health from their
termination from employment by that board as of October 31, 1976.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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