

**OPINION**  
**59-256**

May 25, 1959 (OPINION)

STATE GOVERNMENT

RE: Merit System Council - Powers and Duties - Compensation Plan

This is in reply to your request for an opinion on section 3 of chapter 332 of the 1957 Session Laws which is section 54-4203 of the 1957 Supplement to the N.D.R.C. of 1943. More specifically subsection 2 of said chapter. You submitted the following questions:

1. In establishing rules covering the establishment of compensation plans, does the Council have final authority to determine what compensation plans will be maintained by the agencies covered by the Merit System?
2. It is legally possible for the governing board of a covered agency to refuse to place in operation the compensation plan which the Council recommends to be established?"

Upon information submitted it is observed that the Merit System Council existed for a number of years prior to the above enactment. The historical background of the Merit System Council relates back to the federal legislation making available certain funds under the legislation broadly referred to as the Federal Social Security Program. At first a separate Merit System Council was in operation for each - the Health Department, and for the Unemployment Compensation Division, the Employment Service, and Public Welfare. In 1952 the two systems were combined and served the Health Department, Unemployment Compensation Division, the Employment Service, and Public Welfare.

Up until the enactment of 1957 the Merit System Council operated without benefit of special legislation. Its function, nevertheless, was recognized by the state and the departments mentioned above.

The departments mentioned above all were receiving federal funds, and pursuant to federal legislation in connection with such funds a Merit System Council was established. The need for the Merit System Council arose by virtue of Title 42, sections 503(a), 302, and 703, U.S.C.A. All of these sections have a similar or identical provision as set out below, except as to a different secretary (health, education or his administrator) and name of the particular program or act.

The Secretary of Labor shall make no certification for payment to any state unless he finds that the law of such state, approved by the Secretary of Labor under the Federal Unemployment Tax Act includes the provision for

1. Such methods of administration (including after January 1, 1940 method relating to the establishment and maintenance of personnel standards on a merit basis, except that the

Secretary of Labor shall exercise no authority with respect to the selection, tenure of office and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."

The state departments so affected voluntarily in connection with the state government recognized and placed themselves under such merit system in accordance with the provisions of the Federal Act stated above.

It is apparent that the Legislature deemed it proper to give this organization official recognition by enacting appropriate legislation. In reviewing the functions and operations of the Merit System before the enactment of this legislation and in comparing them to the statutory provision, it is noted that they are similar in most respects, except for more specific authority.

In adopting chapter 54-42 we must assume that the Legislature was aware of the policy announced by the Federal Security Agency, Social Security Administration, dated September 1, 1948 entitled "Standards for a Merit System of Personnel Administration." This publication set forth the minimum standards for a state Merit System. This publication amongst other things contains a minimum "Classification Plan" and a "Compensation Plan." The same terms are found in subsection 2 of section 54-4203. It must be presumed that the legislature is using such terms used them in the same manner and meaning as they were used in the publication referred to.

Under the heading of "Classification Plan" is this statement:

A classification plan for all positions in the agency, based upon investigation and analysis of the duties and responsibilities of each position, will be established and maintained. The classification plan will include an appropriate title for each class of position, a description of the duties and responsibilities of positions in the class, and requirements of minimum training, experience, and other qualifications suitable for the performance of the duties of the position."

Under the heading of "Compensation Plan" there is this statement:

A plan of compensation for all classes of positions in the agency will be established and maintained. Such plan will include salary schedules for the various classes in which the salary of a class is adjusted to the responsibility and difficulty of the work. The salary range for each class will consist of minimum, intervening, and maximum rates of pay to provide for salary adjustments within the range. In arriving at such salary schedules, consideration will be given to the prevailing rates for comparable positions in other departments of the State and to other relevant factors. The State administrative agencies will adopt plans for salary increases based upon quality and length of service. Salary laws and rules and regulations uniform applicable to departments of the

State government will be given consideration in the formulation of the compensation plan."

The state statute provides that:

The Merit System Council shall establish general policies, rules and regulations which shall be binding on the agencies affected. (Underscoring supplied)

These rules shall cover such items as:

". . . .

2. The establishing and maintenance of classifications and compensation plans;

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. . . ."

There can be little doubt, if any, as to what the legislative intent was. In the reading of the statute the meaning is apparent and clear. This is particularly so when the terms used therein are ascribed the same meaning as found in the publication which must be assumed.

Some of the statutory provisions of the departments concerned are on the surface not in complete harmony with chapter 54-42 as enacted by the 1957 Legislature. These are section 50-0608 of the N.D.R.C. of 1943 relative to Public Welfare, section 52-0201 of the 1957 Supplement to the N.D.R.C. of 1943 relating to the Unemployment Compensation Division.

The material provisions as relating to the question on hand pertaining to the Unemployment Compensation Division are part of the original act adopted in 1937. Some amendments have been made later, in section 52-0201, but not on this subject matter. The provisions of section 50-0608 have been part of such section since the adoption of the Public Welfare Act in 1935.

Of the agencies affected by chapter 54-42 the Health Department has by special legislation adopted the Merit System Council under the provisions of section 23-0108 in 1947. The Employment Service Act makes specific reference to regulations prescribed by United States Employment Service. (Sections 52-0805 and 52-0804). As to the unemployment Division and the Public Welfare, there can be little doubt, if any, that they come under the 1957 legislation. (54-42).

The statutes and the law referred to and involved in our question are all in the class of special legislation. The 1957 legislation, chapter 54-42, is also special legislation, specifically applicable to the enumerated agencies. Being that chapter 54-42 was enacted subsequently to the other sections in question it must supersede and take precedence over previous legislation not in harmony with this chapter.

Being aware of the purpose for which the Merit System Council was adopted and the purpose for which chapter 54-42 was enacted, and being fully aware of the federal legislation requiring certain departments who are receiving federal funds to operate under a Merit System Council, the provisions of chapter 54-42 must be given full consideration and must prevail over any other law which is not in harmony or is inconsistent with the provisions of this chapter.

In response to your question No. 1, it is our opinion that the compensation plans set up and maintained by the Merit System Council are final and binding on the agencies governed by such system.

In reply to your question No. 2, it is legally not possible for the governing board of a government agency to refuse to put in operation the compensation plan which the council recommends to be established and still be considered to be operating within the provisions of state and federal legislation. An agency so refusing puts the entire program in jeopardy and is placing the agency in a position whereby the federal funds may be withheld or withdrawn.

LESLIE R. BURGUM

Attorney General