

DARRELL F. SMITH, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

January 19, 1967

DEPARTMENT OF LAW OPINION NO. 67-5 (R-2)

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REQUESTED BY: VERNON C. FOSTER, Secretary
Merit System Council
Arizona Highway Patrol

QUESTION: Whether the enactment of Arizona Revised Statutes, Section 18-191, in the 1964 General Session, would in any manner affect Attorney General's Opinion 49-197, which was issued in 1949 interpreting the method of selecting the Superintendent to the Arizona Highway Patrol.

ANSWER: No.

We have reviewed the above referenced opinion which was dated July 27, 1949, during the administration of former Attorney General Fred O. Wilson, and pursuant to your request we have especially considered any effect upon that opinion which the enactment of A.R.S. § 18-191 (Laws 1964, Ch. 75, § 1) might have.

Since the original 1949 opinion did not enjoy the general widespread distribution which present day Attorney General opinions do, we feel it might be beneficial to quote verbatim that opinion. The following, therefore, is the entire text with the current citations bracketed:

"Ezra J. Warner, Secretary
Merit System Council of the
Arizona Highway Patrol
Phoenix, Arizona

Dear Mr. Warner:

"This is in reply to your oral request for an opinion regarding the method of appointment of the Highway Patrol Superintendent.

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"We are happy to clarify this matter which we touched upon in our former opinion of July 8, 1949, although we did not cover it in detail. You will note on page two of the above mentioned opinion, we stated that the Act makes the Highway Patrol a division of the Highway Department composed of (a) the Patrol Superintendent; (b) patrolmen and other assistants; and (c) the Merit System Council, and that all of the above named personnel except members of the Merit System Council are declared to be in the classified employment of the division. We find this to be true by a reading of the entire Act.

"The third sentence in Section 66-701 [now designated A.R.S. § 28-231] thereof reads:

' "All employees of the division, except members of the Merit System Council, shall be classified and subject to the merit system plans and regulations established pursuant to this Act." '

"Subparagraph 3 of Section 66-701B [now designated A.R.S. § 28-235] provides that the Merit System Council shall:

' "* * * (d) provide a plan for fair and impartial selection, appointment, retention, and for separation or removal from service by resignation, retirement or dismissal of all classified employees." '

"Section 66-7010 [now designated A.R.S. § 28-234] provides that the Patrol Superintendent shall be appointed by the Governor. It further requires, however:

' "he shall be subject to the merit system rules established pursuant to this Act, and may be removed by the Council only pursuant to such rules. He shall be the administrative head of the division and shall also, subject to such merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees in the division." '
(Italics supplied)

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"It is evident that the Patrol Superintendent is one of the classified employees of the division, subject to all the rules and regulations set up by the Merit System Council. He is the appointing authority for all employees in the classified system, except himself, and in his case the appointing authority is the Governor. All appointments, however, are subject to the merit system rules and regulations, including 'impartial selection'. This is in line with recognized merit systems of civil service.

"Ordinarily, the civil service commission has no power to appoint to any office or position, but the power to appoint is in the head of the department or office in which a position is listed under the civil service act. The commission generally certifies to the officer having the power of appointment a limited number of names of those standing highest on the eligible list, and such officer selects his appointee from among those certified." ' 10 Am. Jur., Civil Service, Sec. 8.

"Thus the Patrol Superintendent, being subject to the merit system rules and regulations promulgated by the Merit System Council (which corresponds to a civil service commission), is to be appointed by his appointing authority, the Governor, from an eligible list prepared under these rules and regulations.

"It is our opinion that the Act clearly indicates the method of selection and appointment of all members of the classified service after the qualifications for all classified positions have been fixed by the Merit System Council. In the case of the Patrol Superintendent, the Governor is the appointing authority, and in the case of all other employees of the classified service, the Patrol superintendent is the appointing authority. All appointments, however, must be subject to the Merit System plans and regulations including the plan for fair and impartial selection of all employees promulgated by the Merit System Council.

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"We trust this answers your inquiry.

Very truly yours,

FRED O. WILSON
Attorney General

LORNA E. LOCKWOOD
Assistant Attorney General"

The text of A.R.S. § 18-191 reads as follows:

"A. There is established an Arizona highway patrol fund.

B. The Arizona highway patrol fund shall consist of:

1. Monies appropriated to the fund from the state highway fund by the legislature.
2. Miscellaneous service fees.
3. Rewards.
4. Awards.
5. Insurance recoveries.
6. Receipts from the sale or disposal of any or all property held by the Arizona highway patrol or purchased with Arizona highway patrol funds.

C. All monies in the Arizona highway patrol fund shall be administered and expended by the patrol superintendent in conformity with the laws governing state financial operations.

D. No monies in the Arizona highway patrol fund shall revert to the general or state highway fund and such monies shall be exempt from the provisions of §§ 35-173 and 35-190, relating to quarterly allotments and lapsing of appropriations.

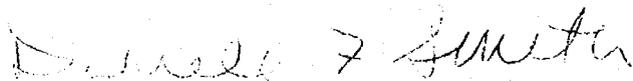
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E. The Arizona highway patrol fund shall be used for the purpose of administering the provisions of law relating to the highway patrol and the Arizona highway patrol reserve and all matters pertaining thereto.

F. The appropriation made by the legislature from the state highway fund shall be deposited in the Arizona highway patrol fund by the Arizona highway department at a rate of twelve and one-half per cent of the total appropriation on the first day of each calendar month beginning on July 1 of each year and the final payment shall be made on February 1 of each year."

Under the provisions of this statute all monies in the Highway Patrol fund are to be administered and expended by the Patrol Superintendent in conformity with the laws governing State financial operations. The Legislature very clearly intended to sever completely the financial control with the Arizona Highway Patrol from the State Highway Department. There is no question but what this was accomplished. However, simply changing the fiscal control formerly held by the Arizona State Highway Commission in no manner affected, by implication or otherwise, the method by which the Patrol Superintendent must be selected.

Respectfully submitted,



DARRELL F. SMITH
The Attorney General

DFS:cah