

April 5, 1949

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**ARIZONA ATTORNEY GENERAL**

*Wilson*

Rollo J. Ellis, Member  
Merit System Council  
of the  
Arizona Highway Patrol  
Eloy, Arizona

Dear Mr. Ellis:

Under date of March 25, this office received a written request from you asking generally whether the Merit System Council of the Arizona Highway Patrol was bound by the appropriation categories set up by the regular session of the 1949 Arizona Legislature in the General Appropriation Bill, or whether it should use the salary and compensation plan formulated by the Merit System Council and approved by the Arizona Highway Commission.

The initiated act, initiated at the General Election, 1948 and amending Section 66-701, Arizona Code Annotated, 1939, provided in part as follows:

"66-701B Merit System Council

3. \* \* \* (c) formulate maximum-minimum compensation plans for such positions, which compensation plans shall be effective only when approved by the Arizona Highway Commission;  
\* \* \* "

From the foregoing it clearly appears that the Merit System Council was given authority by the initiated measure to set up a merit system and as a part of that system to formulate maximum-minimum standards for compensation for the positions which it found necessary to classify and reclassify, thus establishing a fixed method by which the salaries for the positions were allocated.

It is apparent that the 19th Legislature, Regular Session, in its appropriation bill making provision for payment of the salaries fixed under this plan, completely disregarded the authority previously given by the people to the Merit System Council. We do not believe that the Legislature may disregard this granted authority in this manner.

Rollo J. Ellis, Member  
Merit System Council of the  
Arizona Highway Patrol

Page Two  
April 5, 1949

In the case of Vivian v. Bloom, 177 P. 2d 541 Colo., the plaintiff sought a declaratory judgment construing the Colorado Civil Service Law which while giving the commission authority to standardize and grade positions in classified service, did not authorize the fixing of salaries; the 1945 general appropriation bill which provided for line appropriations for the commission was also construed. The court said, in construing the civil service act and the appropriation bill:

"Furthermore, while authority of the Assembly to fix compensation has not been transferred by the amendment from the Assembly to the Commission, its authority has been limited thereby. Under the amendment the Assembly can no longer fix the salary of each class and grade as established, by the Commission, and the performance of its obligation so to fix salaries is necessary for the proper establishment of civil service in Colorado in accordance with the amendment. Thus equal salaries for all persons having like classification are assured."

" (b) That the Assembly has no authority to discriminate in regard to salaries between members of any class and grade as established by the Commission."

" (d) That salaries must be fixed according to class and grade as established by the Commission and the determination of equality of service rests in its discretion."

From the foregoing, we are of the opinion that the people by the initiated measure have granted to the Merit System Council of the Arizona Highway Patrol, the authority to fix salaries and classify positions in that department, and that the attempt to change the same by legislative enactment contained in the general appropriation bill is without legal authority. The classified schedule approved by the Arizona Highway Patrol Merit System Council should be the basis for the payment of salaries of the Arizona Highway Patrol personnel.

Rollo J. Ellis, Member  
Merit System Council of the  
Arizona Highway Patrol

Page Three  
April 5, 1949

The provisions of the general appropriation bill in so far as it attempts to fix salaries, eliminate classifications of positions and add classifications of positions and consolidate classifications of positions, is in conflict with Section 66-701 as amended by the initiated act of November 2, 1948, and should be disregarded in that respect. The budget items for Superintendent, Assistant Superintendent, Governor's Aide, Chief Clerk, Captains, Inspectors, Sergeants and Patrolmen should be lumped together with the item "Other Personal Services" and considered as one lump sum appropriation.

If there is not sufficient money appropriated to compensate all personnel or contemplated personnel under the plan submitted by the Merit System Council and approved by the Arizona Highway Commission, then it becomes the duty of the Merit System Council to curtail the personnel to the extent that it will fit the budgetary total, but it is not proper to reduce salaries of any category below that provided in the compensation plan so submitted and approved. (City of Phoenix v. Kidd, 54 Ariz. 75; 92 P. 2d 513.)

In answer to the second question propounded in your letter of March 25, regarding the necessity of a rule to pay for witness fees and fees for subpoenaing witnesses to appear at hearings before the Merit System Council, this office is of the opinion that the rules of the Merit System Council should be amended to include such a rule providing for payment of witness fees and service of subpoenas, and that such should be paid from the item in the budget indicated as "Other Current Expenses".

It appears that the reasonableness of such a rule could not be questioned under the rule making power contained in the initiated measure above referred to.

Very truly yours,

FRED O. WILSON  
Attorney General

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Copy sent to Jack Powell  
Assistant Superintendent  
Arizona Highway Patrol 4-5-49