



THE ATTORNEY GENERAL
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October 14, 1970

Mr. George W. McNiel
State Auditor
Sam Houston State Office Bldg.
Austin, Texas

Opinion No. M-706

Re: Legality of Legislative
Audit Committee authoriza-
tion for agency heads to
reclassify downward at
time of conversion to
new salary schedule pro-
vided in General Approp-
riation Acts without a
change in rate of pay.

Dear Sir:

Your letter of September 11, 1970, asked for answers to the following questions:

"(1) The legality of the authorization by the Legislative Audit Committee for the heads of agencies and departments to make reclassifications downward at the time of conversion to new salary schedules established in General Appropriation Acts without a change in the employee's rate of pay; and

"(2) The legality of the authorization by the Legislative Audit Committee for the Classification Officer to direct, in conformity with Audit Committee policy, that individual reclassifications to a lower salary group may be made without a change in the employee's rate of pay."

Your letter further states that there exists a conflict of opinion of whether a reclassification downward should be treated as a demotion in accordance with Article V, House Bill 2, 2nd Called Session, 61st Legislature, governing "demotions" or whether a reclassification downward is accomplished by the

4th paragraph of the act. Paragraph 4 of the act reads as follows:

"An employee whose classification position is reallocated by this Act to a lower salary group shall receive the annual rate which he would have received had the position not been reallocated, not to exceed the step 7 rate of the lower salary group."

Section 1(3) reads as follows:

"DEMOTIONS. Demotion means a change in duty assignment of an employee from a position in one classification to a position in another classification in a lower salary group. An employee who is demoted shall have his salary reduced at least to a rate one increment below the rate he received before demotion." (Emphasis added.)

Article 6252-11, the Position Classification Act of 1961, reads, in part, as follows:

"Sec. 4. Commencing with the effective date of this Act, all regular full-time salaried employments with the exceptions and deferments specified hereinabove shall be made only in conformity with the classes of work described in such Position Classification Plan, and under the titles authorized by such Plan. The State Auditor shall examine or cause to be examined in periodic post-audits of expenditures of State departments and agencies, and by such methods as he deems appropriate and adequate, whether employments have been made in accordance with the provisions of this Act, and shall report the facts as found to the Governor, the Comptroller, and the Legislative Audit Committee."

Section 6 of the Act reads, in part, as follows:

"When exceptions to or violations of the Position Classification Plan or of prescribed salary ranges are revealed by personnel audits, the Classification Officer shall notify the agency head in writing and specify the points of nonconformity or violation. The executive head of such agency shall then have reasonable opportunity to resolve the exception or end the violation by reassigning the employee to another position title or class consistent with the work actually performed, by changing the employee's title or salary rate to conform to the prescribed Classification Plan and salary range, or by obtaining a new class description of work and salary range to correct the exception or violation." (Emphasis added.)

We answer both of your questions by saying that the reclassification downward, whether at the time of conversion to the new salary schedule or by individual reclassification during a fiscal year where there is no change in the employee's duty assignment, may be made without a change in the employee's rate of pay, not to exceed step 7 rate of the lower salary group.

The Act specifically sets reclassifications apart from demotions in Section 1e(1) which reads in part as follows:

". . . Reclassification shall not be interpreted to mean a change in the employee's duty assignment, but only shall mean the proper definition of duties and classifications of the position based upon duties actually performed by the employee; hence, a position shall be reclassified for the sole purpose of complying with the requirements of the Classification Act." (Emphasis added.)

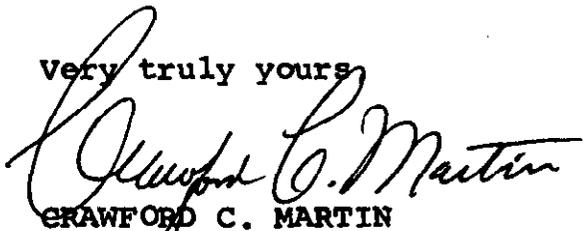
The act further provides for a reduction in salary in the event a classification audit determines that a position is classified higher than is warranted by actual duty assignments, (Section 1e(2) of the Act) according to the "... policies and procedures as the Legislative Audit Committee may prescribe."

Under the provisions of Article V, House Bill 2, Acts of the Second Called Session, 61st Legislature, job reclassifications downward without change in duty assignments, may be made either at the time of conversion to new salary schedules or by individual reclassifications during a fiscal year without a reduction in the employee's rate of pay, not to exceed step 7 of the lower salary group.

S U M M A R Y

State employees under the classification system may be reclassified downward, without change in duty assignment, without a mandatory reduction in rate of pay, not to exceed step 7 rate of the lower salary group.

Very truly yours,



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