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Personnel Department – State
Employees – Compensation – Rules
and Regulations

Pursuant to Rule 670-X-8-.09 of the
Alabama Administrative Code, the
State Personnel Board has the
authority to approve a pay reduction
plan submitted by an appointing
authority to reduce the salary pay
steps of employees in that
department.

Dear Ms. Graham:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

Does the State Personnel Board have the
authority to approve the pay reduction plan sub-
mitted by an appointing authority to lower the
pay steps of employees in that department by up
to three steps within the pay range?

FACTS AND ANALYSIS

Your request states as follows:

The Alabama State Personnel Board
("Board") promulgates rules in accordance with

the Alabama Administrative Procedures Act; section 41-22-1, *et seq.*, of the Code of Alabama; and section 36-26-9 of the Code. These rules, which govern the Merit System, have the force and effect of law, except where in conflict with the laws of Alabama. ALA. CODE § 36-26-9 (2001) (“[r]ules adopted under this section, not in conflict with the laws of Alabama, shall have the force and effect of law”). This Code section further requires the Board to establish rules providing for administering the pay plan (“[a]mong other things, such rules shall provide for the method of administering the classification plan and the pay plan”). *Id.*

The Merit System Act is set forth in section 36-26-1, *et seq.*, of the Code. (ALA. CODE §§ 36-26-1 to 36-26-47 (2001 & Supp. 2010)). These laws require, *inter alia*, that the State Personnel Director prepare and recommend to the State Personnel Board a pay plan for all employees in state service. The pay plan takes effect when approved by the Governor, who has the power to revise or alter the plan. ALA. CODE § 36-26-12 (2001). In 1981, based upon an exhaustive study by outside consultants, the State Personnel Director recommended to the State Personnel Board an entirely new pay plan and classification structure. The new pay plan structure (the “Craver study”) was adopted by the Board and fully implemented in 1982. The rules governing this new pay plan were promulgated in 1981 and amended in 1983. (*See* Rule VII: PAY PLAN AND PAY ADMINISTRATION, now codified at Rule 670-X-8 of the Rules of the State Personnel Board.)

Chapter 8 (formerly Rule VII) of the Rules of the State Personnel Board govern all aspects of the state pay plan. For example, these Rules provide for promotional raises, probationary raises, merit raises, etc. The only authority for providing any raises to state employees (other

than cost-of-living raises) is through the State Personnel Board Rules contained in this chapter. These Rules, which were adopted and amended as a package, provide for increases in the pay range, as well as reductions within the pay range. The Rule providing for a reduction in the pay range is as follows:

670-X-8-.09 Salary Reduction Within Range

An appointing authority may reduce the salary of any employee to a lower rate in the range for the position with approval of the Board. In such cases, at least 10 days before the recommended action is to take place, the appointing authority shall notify the employee and submit the recommendation in writing with the reasons therefor to the Director. When such action is approved, the anniversary date of the employee shall be changed to the effective date of the salary reduction.

Pursuant to Rule 670-X-8-.09, an appointing authority recently requested approval of the State Personnel Board to lower the salary rates by up to three steps (approximately 7.5 percent) within the pay range for all employees in the department. This request was made to avoid massive layoffs and allow the department to carry out its statutory responsibilities. Questions have arisen as to the authority of the Board to approve such a reduction.

The statutes governing the State Personnel Board, State Personnel Department, and the Merit System are found in sections 36-26-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 36-26-1 to 36-26-47 (2001 & Supp. 2010). Rules for the implementation of the Merit System are adopted by the Board [ALA. CODE § 36-26-9 (2001)], and have the force and effect of law, unless in conflict with existing laws. The State Personnel Board adopted Rule 670-X-8-.09, which authorizes an appointing authority with approval from the Board, to reduce the pay steps for

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employees within the pay range. Accordingly, this Rule is presumed to be valid and enforceable.

The State Personnel Board is the administrative guardian of the Merit System. The requirement that the State Personnel Board approve the actions of the appointing authority in reducing the pay within the salary range adds confidence, stability, and integrity to the process and the Merit System. The State Personnel Board should review the request of the appointing authority to ensure that bad faith is not present and that the request is not being made for any improper purposes. *See Waggoner v. Whatley*, 209 So. 2d 370, 375 (Ala. 1968) ([i]n layoffs, the Board is expected and required to see that the appointing authority is acting in good faith). If the appointing authority provides legitimate good-faith reasons for the request, the pay reduction plan may be approved by the State Personnel Board.

CONCLUSION

The Rule promulgated by the State Personnel Board allowing an appointing authority to reduce the salary of employees within the pay range is presumed to be valid and enforceable and has the force and effect of law. The State Personnel Board should review the pay reduction plan to ensure that there are legitimate good-faith reasons for the request.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

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