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ATTORNEY GENERAL DETERMINES THAT GENERAL ASSEMBLY MAY ALLOW STATE COLLEGES AND UNIVERSITIES TO "OPT-OUT" OF CIVIL SERVICE SYSTEM.

Troy Eid, Executive Director of the Department of Personnel & Administration, announced today that the Office of Attorney General Ken Salazar has issued a formal legal opinion concluding that the General Assembly may authorize state colleges and universities to "opt-out" of the state civil service system.

"The General Assembly may determine whether employee positions at state institutions of higher education, not otherwise exempt under the Civil Service Amendment, should be included within or excluded from the state personnel system," the opinion concluded. The opinion was issued in response to a request for guidance by the Governor's Commission on Civil Service Reform.

In the course of its work, the Governor's Commission on Civil Service Reform noted that "the financial and oversight relationship of institutions of higher education to the rest of state government has become more attenuated .... the question arises regarding

why and to what extent institutions should continue to be tied to the State in purchasing, capital development, and human resources."

In a September 2002 report, the Office of the State Auditor agreed: "Since the higher education personnel system appears to be moving slowly toward an exempt system, expediting this process could result in certain efficiencies. It could help eliminate disparities in position classifications (i.e., exempt versus classified) within the higher education system, as well as in the state personnel system, which would in turn help eliminate the tension and conflict that sometimes occurs between classified and exempt employees."

Therefore, the Commission began discussing reform measures that would allow each institution, on a governing board basis, to "opt-out" of the state system and create its own personnel system to meet its specific and unique needs. It was initially thought that any such plan might require a constitutional amendment, but further research suggested that the General Assembly might already have that authority. Consequently, the Commission asked the Attorney General to review the question and provide guidance.

The Civil Service Amendment of the Colorado Constitution generally requires all state employees not otherwise specifically exempted to be included in the system. However, the Attorney General concluded that a later constitutional amendment concerning higher education creates a large exception: "The later, more specific amendments to Article VII, § 5 controls the earlier, more general provisions of the Civil Service Amendment." An important caveat, though, is that "statutory changes in the application of the civil service system to employees of higher education must recognize and preserve the protected status of existing employees."

Based upon this analysis, the Commission has not recommended a constitutional change with respect to institutions of higher education. Instead, it has recommended that

the General Assembly ensure that at least four components are included in any "opt-out" proposal:

- Affected employees should be involved in the design of any alternative system;
- Due process in employee discipline must be ensured;
- Current civil service employees' rights must be guaranteed if incumbents do not wish to transition to the new system; and
- Current employees should have the right to continue to participate in the Public Employees' Retirement Association (the government pension plan).

The Commission believes that by adhering to these principles, the General Assembly and individual governing boards can foster improved human resource management at the various institutions of higher education.

The Commission's report and recommendations, and the Attorney General's legal opinion, are available on the web at www.Colorado.gov/dpa/csrc/index.htm

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