

M E M O R A N D U M

May 9, 1991

TO: William P. Garrett
Personnel Director

FROM: Sharon V. Burrell *Sharon V. Burrell*
Assistant County Attorney

RE: Discontinued Service Retirement for Administrative
Services Coordinator in DEP

Your request for an opinion regarding a discontinued service pension for DEP's Administrative Services Coordinator (ASC) has been referred to me for a response. You stated in your memorandum that the incumbent of the ASC position in the Director's Office, Department of Environmental Protection, has expressed interest in discontinued service retirement based upon the proposed abolishment of his position. You indicated that you were concerned that his request for discontinued service retirement does not meet the intent of §33-45(d) of the Montgomery County Employees' Retirement System law because it appears that DEP's proposed action with regard to the ASC position and the Administrative Specialist III position represents a position reclassification and not a true position abolishment.

In summary, DEP plans to abolish the ASC position and distribute his duties among the Deputy Director, the Automated Systems Manager, the Program Specialist Training Coordinator and the to be created Administrative Specialist III. Originally the duties and responsibilities of the Deputy Director did not include some of the duties/responsibilities now performed by the ASC. Additionally, after discussions with the Personnel Office, DEP modified the duties of the Administrative Specialist III which were too similar to the ASC position.

In my opinion, the proposed abolish/create action falls within the definition of position abolishment and not position reclassification and therefore the intent of §33-45(d) would be met.

Section 33-45(d) of the Employees' Retirement System law provides that any member whose position has been abolished or employment has been terminated by an administrative act may elect a discontinued service pension provided certain requirements are met. There is nothing in §33-45 or in the Retirement law which defines abolish. However, the County has

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interpreted "abolish" to encompass RIFs through the provision for discontinued service retirement in Administrative Procedure 4-19 (Reduction-in-Force).

Administrative Procedure 4-19 §3.16 defines reduction-in-force as:

The elimination of a position or positions because of a lack of sufficient funds, a change in the approved work program/plan/design for a department/office/agency, or a technological change or advancement that impacts on work force needs.

The authority for the definition in A.P. 4-19 is §25-1 of the Personnel Regulations. There is nothing in A.P. 4-19 or in the Personnel Regulations which requires that the duties and responsibilities assigned to a position subject to a RIF must be either eliminated or completely absorbed by other existing positions. To the contrary, A.P. 4-19 §4-2 provides for the creation and deletion of positions in accordance with budgetary requirements in resolving RIF issues. There is no limitation in A.P. 4-19 on the types of duties assigned to the created position.

Budgetary reasons were given for the abolishment of the ASC position and the creation of the Administrative Specialist III position. The abolishment of the ASC position (Grade 27) and the creation of the Administrative Specialist III position (Grade 23) which will perform some, but not all of the duties of the ASC, results in a savings of \$44,120 in personnel costs. The remaining duties of the ASC will be distributed among the Deputy Director, the Automated Systems Manager, and the Program Specialist Training Coordinator.

Based on the facts as provided by you, Bill Davis and Edward Graham, the proposed abolish/create action would not be a position reclassification since all of the duties of the Administrative Services Coordinator are not being transferred to the Administrative Specialist III.

Reclassification contemplates the duties of an incumbent, not a new position. Reclassification is proper to conform a position to the actual assignment of duties being performed by a particular incumbent. Administrative Procedure 4-2 (Position Creation and Classification), §2.15 defines

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reclassification as the reassignment of a position to a different class. A.P. 4-2 provides specific procedures which must be complied with in order to reclassify a position. Additionally, Personnel Regulations §7-4(b) provides that the Personnel Director may reclassify positions when a review of the position description or a desk audit indicates a significant change in the type of work performed, difficulty and complexity of duties, level of responsibility or knowledge, skills and abilities required.

In this situation, the position of Administrative Services Coordinator has not been reclassified pursuant to a review of the position description or a desk audit. Nor have the procedures outlined in A.P. 4-2 been followed. This is not the case where it is determined that the duties of the Administrative Services Coordinator are not consistent with what had originally been determined to be the proper grade for the position.

Based on the language in §33-45(d), the RIF procedures, and the definitions and procedures of reclassifications, the proposed abolish/create action would not violate §33-45(d). The retirement law provides for a discontinued service pension where an employee's position has been abolished. The ASC position will be abolished. There is nothing in the law, Personnel Regulations or administrative procedures which provides an exception where some of the duties remain with other employees. Accordingly, in my opinion, the proposed abolishment of the ASC position meets the intent of qualification for discontinued service retirement pursuant to Montgomery County law.

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cc: Edward U. Graham, Director
Department of Environmental Protection

Robert K. Kendal, Director
Office of Management and Budget