

Bavarian Elector Max IV Joseph, Ordinance on “the Circumstances of State Servants, especially regarding their Status and Salary,” cosigned by Montgelas (January 1, 1805)

Abstract

The provisions of this Bavarian ordinance influenced the practices of other German states and advanced a process that had been evident in Germany since the 1770s: the move to give state officials new security with regard to pay and conditions of dismissal, to provide them with pensions and survivors' benefits, and to codify their duties and rights in administrative law. In the 1780s, Joseph II of Austria had also taken important steps in this direction. The “privileging” of bureaucrats was balanced by a new “disciplining” of them; this was evident, for example, in the stringent sanctions against misuse of office inscribed in the Bavarian Criminal Law Code of 1813.

Source

Max. Joseph, Elector etc.

Since assuming office, We have provided repeated proof of just how much We have made the public circumstance of Our state servants the subject of Our sovereign affairs in three respects, namely with respect to ensuring the dignity and protection of their professional status, a just and decent salary, and, finally, a comfortable fate for their widows and orphans. Moreover, We deem the first fiscal year after the reformation of Our financial system an excellent time to give him [the state servant], from this perspective, too, a permanent designation by means of a combined and supplemental revision of the provisions related to these matters, as follows:

I. The professional status of state servant is acquired after the qualification requirements are fulfilled by means of the employment notification, which, in the case of all senior positions, is accompanied by a special nomination decree and linked, in every instance, with assignment to a category in the payroll budget.

II. The salaries appearing in the active service budgets are divided into two components:

Into a rank-based salary, – and into a service-based salary.

III. The rank-based salary is that part of the servant's pay that, in general, ensures the competence of the individual as a member of a certain rank of the class of state servants.

The service-based salary is that part of the servant's pay that, in particular, ensures the satisfaction of those internal and external duties that arise for the individual as a functionary within the class of his professional order. [...]

VI. In cases where a principal remuneration without additional pay is conferred, certain parts are declared as a service-based salary, namely

a) three tenths in the first decade of service;

b) two tenths in the second decade of service; and

c) one tenth of the total salary upon entering the third decade of service and thereafter;

and thus, the rank-based salary is

a) seven tenths in the first period;

b) eight tenths in the second period; and

c) nine tenths of the total salary in the third period. [...]

VIII. The loss of the servant's status (dishonorable dismissal) can occur only after prior judicial inquiry and on the strength of the judgment of a Judicial College. Moreover, in the unexpected event that a state servant might be capable of offending the dignity of the sovereign by verbal or physical attacks, the loss of his status is expressly included among the legal penal provisions, in addition to the immediate suspension of all of his professional and public activities. [...]

X. Except in the case of a judicial verdict, the servant's status and the rank-based salary, once bestowed, have the inviolable nature of perpetuity.

The servant's function and the service-based salary are more precarious in their nature.

They can, as the result of an administrative decision or an organic decree, and without judicial redress,

be taken away, either permanently, through dismissal,

or temporarily, through furlough.

XII. Dismissed and furloughed servants retain their professional title and rank-based salary and lose their functional salary.

At the same time, dismissed servants lose their right to use the external regalia (official dress) associated with their professional class.

The furloughed servant retains the right to use this functional regalia, until he resumes this function, and the regalia associated with that function.

XIII. An active state servant can also be relocated for the same administrative or organic reasons that he can be furloughed.

The transfer of location, however, can involve neither a demotion in service class,

nor a loss in terms of overall salary or as a result of unavoidable moving expenses. [...]

XVII. The authority, on the side of the state, to dismiss and retire servants also exists on the side of the servant, in accordance with the following provisions: [...]

B. A state servant may retire on the basis of length of service. The requirement for this in all classes of service is 40 years of completed service.

To reach the required 40 years, the servant is allowed to add up all of the years served under different governments of the entire Electoral State and in different classes of service; but years spent in preparatory posts and on interim furloughs cannot be counted.

A state servant who retires after completing the length of service retains his rank-based salary along with his title and functional regalia and loses his service-based salary.

C. A state servant may retire on the basis of age.

The requirement for this in all classes of service is 70 years of age.

A state servant who retires upon reaching the age of 70 also retains his rank-based salary along with his title and functional regalia and loses his service-based salary.

D. A state servant may be declared unfit for work and thus eligible for retirement before reaching 40 years of service or 70 years of age on the basis of physical infirmity, as the result of an external misfortune suffered during or outside of his duty, or for reasons of inner exhaustion.

Such instances must be verified by rigorous factual evidence and by the most definitive statements of public health officers and competent officials.

In each instance, the specific nature of the individual case determines whether the state servant is to be retired – permanently – or only furloughed;

and whether he is to be left, in the one instance or the other, with either all or a part of his service-based salary, in addition to the rank-based salary and title he retains in retirement.

XVIII. The directors and councilors of the Judicial Colleges retain, in all cases of retirement, their entire salary. [...]

XXIV. With regard to the inevitable insufficiencies of income for the widows and orphans of state servants, the state will undertake to establish a surrogate in the form of a pension system commensurate with the state servant's level of familial support and the means of the state budget. The associated regulations are included in the following paragraphs.

§1. The pension, as a supplemental component of the salaries passed on to widows and orphans of state servants, is determined solely on the basis of the salary of the testator; it excludes any consideration of his own private wealth or poverty, and considers only whether he was actively employed or retired.

§ 2. If a state servant dies while in service, his widow receives one fifth of his permanent total monetary salary as a pension.

This total monetary salary consists solely of the rank-based salary and the service-based salary granted as a fixed sum of money. [...]

§ 4. Whether the deceased father was actively employed or retired, each child, as a half-orphan or fatherless orphan, receives one fifth; and as a full or father- and motherless orphan, three tenths of the widow's pension, as a contribution to support and education. [...]

§ 24. All of the pensions whose provisions are noted in the previous paragraphs are paid from state funds.

This state benefit in no way rules out the establishment of a special supplemental widows' and orphans' insurance plan funded by the private assets of state servants who join a society to this end; instead, such a contribution toward improving the condition of family members of state servants ties in with the state's most earnest charitable arrangements. [...]

Source: *Churfürstbayerisches Regierungsblatt*. VIIth issue dated 13 February 1805. Col. 225–234, 239; reprinted in Walter Demel and Uwe Puschner, eds., *Von der Französischen Revolution bis zum Wiener Kongreß 1789–1815*. Deutsche Geschichte in Quellen und Darstellung, edited by Rainer A. Müller, volume 6. Stuttgart: P. Reclam, 1995, pp. 130–36.

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