

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

M A I N E S T A T E C O M P E N S A T I O N C O M M I S S I O N

Donald E. Nicoll, Portland, Chairman
Charles F. Canning, Jr., Augusta
Wallace M. Haselton, Augusta *
Jane M. Roy, Harpswell
Robert M. Smith, Bath

FINAL REPORT, March 27, 1984

INTRODUCTION

The Maine State Compensation Commission, established under Chapter 498, 110th Legislature, as amended by Chapter 101, 111th Legislature, submits the following report to the 111th Legislature.

The Commission has met eleven times since its appointment, including nine working sessions, one meeting with the Legislative Council and two public hearings.

In its deliberations the Council has considered compensation for State legislators, the Governor, constitutional officers, members of the judiciary, the Clerk and Assistant Clerk of the House and the Secretary and Assistant Secretary of the Senate, and legislative staff. The Commission has obtained data and other information on compensation for public officials and other comparable states. The Commission has also examined economic indicators and their trends prior to and since the recommendations of the previous Compensation Commission.

In its research and its deliberations the Commission has received invaluable support, advice and assistance from Sarah C. Diamond, Legislative Administrative Director, and John R. Selser, Legislative Counsel in the Office of Legislative Assistants. The Commission has also sought expert advice and has been assisted by the Department of Personnel, the State Retirement System, the Attorney General's Office and the State Planning Office.

The Commission has been guided by the objectives of fair, reasonable and just compensation for public servants. Economic reward should not be the primary objective of public service, but compensation that is not reasonably competitive with other employment opportunities is an unwarranted obstacle to the recruitment and retention of talented individuals for places of public trust.

* - Mr. Haselton participated in the Commission's deliberations through the filing of its preliminary report, January 5, 1984, but was out of the State and unable to participate in its subsequent work.

Commission members are conscious of the fiscal constraints under which the State is operating. They are also aware from the history of state compensation that failure to maintain reasonable levels of pay and benefits for elected and appointed officials accumulates problems that in the long run are more expensive to correct than modest adjustments made on a regular basis. "Justice delayed is justice denied," and fair, reasonable and just compensation delayed leads to untold difficulties in lost opportunities and frustration over the financial burdens borne by public servants.

Draft legislation designed to implement the Commission's recommendations is being submitted to the Legislature. Fiscal notes covering the projected costs of the proposals will accompany the draft legislation.

LEGISLATORS, LEGISLATIVE LEADERS, INDIAN REPRESENTATIVES

Findings

Maine State Representatives and Senators now receive a biennial salary of \$10,000 (\$6,500 for the first regular session and \$3,500 for the second regular session). The Speaker of the House and the President of the Senate receive salary differentials of 50%. The House and Senate majority and minority leaders receive differentials of 25%. The House and Senate assistant majority and minority leaders receive differentials of 12.5%. The previous Compensation Commission recommended that House and Senate co-chairs of joint standing committees receive the same differential as assistant majority and minority leaders in the House and Senate. That recommendation was not adopted by the Legislature.

Legislators also receive \$35 per day for special sessions and committee meetings outside the legislative sessions. Indian Representatives receive \$35 per day when in attendance at legislative sessions. Per diem compensation for special sessions and committee meetings outside the legislative sessions is considerably below the average daily rate for the regular sessions (\$66.67).

Under the 1982 recommendations adopted by the Legislature, legislators receive reimbursement of \$300 per year for constituent service expenses, \$21 in meals allowances, \$45 per day in meals/lodging allowances for legislators who live in Augusta during the sessions, and 22¢ per mile, with a maximum of 120 miles per day, for commuting. Indian Representatives receive the same reimbursement for expenses incurred when in attendance at the Legislature.

The current salary levels for legislators were recommended in 1982 and adopted by the 110th Legislature. They were based on 1981 economic data and were designed to achieve rough comparability with income for hourly factory workers. Reimbursement for expenses was also based on 1981 economic data.

Between 1981 and 1983, Maine per capita income rose 13.6%, average hourly wages of Maine factory workers increased 14.9% and average wages and salaries of all Maine employees rose 15.1%. During the same period, in Maine the personal consumption expenditure deflator increased 10.5% and the Consumer Price Index (CPI) went up 9.6%.

Maine is now 34th among the states in the compensation of its legislators. The biennial compensation is approximately 10.7% of the highest state legislative compensation (\$93,720) and less than half (40.4%) of the average state legislative compensation (\$24,732).

Recommendations

The Commission recommends, effective with the 112th Legislature:

1. Increase the biennial salary for legislators by 15%, to \$11,500: \$7,500 in the first regular session and \$4,000 in the second regular session. This is comparable with income gains in Maine between 1981 and 1983.

2. Increase the per diem compensation for special sessions and committee meetings outside the legislative sessions from \$35 to \$50 per day. This is greater than a 15% increase, but moves the per diem compensation closer to the average daily salary for the regular sessions.

3. Increase the annual constituent service expense reimbursement by 10%, to \$330.

4. Increase the daily meals and lodging allowances by approximately 10%, from \$21 to \$23 in meals allowances and from \$45 to \$50 in combined meals/lodging allowances for legislators who live in Augusta during the sessions. The proposed increases are consistent with cost of living increases between 1981 and 1983.

Maintain the mileage reimbursement at the current State level of 22¢ per mile, with the same maximum trip mileage of 120 miles.

5. Maintain the existing differentials for House and Senate leadership and institute a differential of 6.25% for House and Senate co-chairs of joint standing committees. The Commission finds, as did its predecessor, that demands on joint standing committee chairs are similar to those on assistant majority and minority leaders in the House and Senate. Their compensation should be similar.

6. Increase the compensation for Indian Representatives to \$77 per diem during the regular sessions, a level comparable with the average daily compensation proposed for members of the Legislature, and to \$50 per diem for special sessions and committee meetings, the same as that proposed for members of the Legislature for special sessions and meetings.

CONSTITUTIONAL OFFICERS

Findings

The previous Compensation Commission recommended establishing some comparability between compensation for the Attorney General, the Secretary of State, the Treasurer of State and the State Auditor, and other senior State officials. The 110th Legislature did not accept those recommendations, but it did approve modest increases in salaries for those offices.

The Commission concluded that the most appropriate and practical way to establish salary ranges for the four constitutional officers was to request a modified "Hay Evaluation" of the four positions. The Department of Personnel undertook a comparable worth evaluation of the positions at the Commission's request, noting that it is difficult to establish exact comparability between appointed and elected positions.

All of Maine's fourteen major department Commissioners are classified in salary range Grade 91 under the salary scale established by the Department of Personnel. Effective July 1, 1984, under a proposal made by the Governor and enacted by the Legislature, the salary range for that grade will be \$41,243.02-\$60,627.91. The salary for the Secretary of State, the Treasurer of State, and the State Auditor is presently set by statute at \$30,000. The Attorney General's salary is set by statute at \$44,431, that of an Associate Justice of the Supreme Judicial Court.

The Secretary of State supervises 348 employees, more employees than six of the departmental commissioners, and is responsible for a budget of \$8,282,250, which is larger than four of those departments. The Attorney General supervises the "largest law firm in the state", with 66 positions in his office. The Attorney General's office is larger than two of the departments headed by a commissioner and has a budget of \$3,972,528, larger than three of those departments. The Treasurer of State supervises 13 employees, fewer than any of the executive branch departments, but is responsible for a budget of \$56,423,331, which is larger than ten of those fourteen departments. The State Auditor supervises only 23 staff members and has a budget of only \$787,847, but he is responsible for post audits and all accounts and other financial records of State government, staff support for the Commission on Governmental Ethics and Election Practices, and for municipal and county audits where requested. The position is sensitive and vital to the integrity of public agency accounts and finances.

Recommendations

The Commission has concluded that the appropriate goal for salary ranges for the constitutional officers is Grade 91, the range established for major department commissioners. At the same time, as in the case of judicial salaries, the Commission recognizes the fiscal limitations imposed on the Legislature. Therefore, the Commission recommends a goal of Grade 91 as the appropriate salary range for the constitutional officers, a goal to be achieved in the 113th Legislature.

As an interim step, the Commission recommends that the Legislature establish a salary range for the Attorney General, Secretary of State, Treasurer of State and State Auditor elected in the 112th Legislature at Grade 90 (\$38,881-\$57,063). The Commission further recommends that the Legislature authorize the Legislative Council to set the specific salary for each constitutional officer within Grade 90 in the 112th Legislature and Grade 91 in subsequent legislatures.

JUDICIARY

Findings

Justices of Maine's Supreme Judicial Court and Superior Court, and Judges in the District Courts are grossly undercompensated. Over the years, as the workload and complexity of demands on judges have escalated, their salaries have fallen behind in comparability and in relation to the cost of living. Maine is at or near the bottom in comparison with judicial compensation in other states.

Median income from professional activities for partners in U.S. law firms of six partners or more was \$96,443 in 1982. If we assume fringe benefits (which are paid out of gross professional income) are equivalent to 20% of cash salary, the net salary for the law partner at the median level would be \$80,369.

At the present time, the Chief Justice of the Supreme Judicial Court of the State of Maine is paid a salary of \$46,514. Associate Justices of the Supreme Judicial Court are paid \$44,431. Superior Court Justices are paid \$43,736, and District Court Judges are paid \$42,086. There is an \$1100 differential for the Chief Justice of the Superior Court and the Chief Judge of the District Court, and a \$500 differential for the Deputy Chief of the District Courts.

The Chief Justice of the United States receives an annual salary of \$100,000. Associate Justices of the U. S. Supreme Court are paid \$96,700. Judges of the U. S. Circuit Court of Appeals receive salaries of \$77,300 and U.S. District Court Judges are paid \$73,100.

The highest chief justice's salary in states considered comparable with Maine in demography and economic conditions* is \$63,000. The median chief justice's salary in those states is \$49,000. The highest comparable salary in New England is \$65,000. The median salary for chief justices in New England is \$49,925. Maine is at the bottom in both groups of states.

The responsibilities of Maine justices and judges are comparable with those of the U.S. Circuit Court of Appeals Judges for the Supreme Judicial Court and with the U.S. District Courts for the Superior Court. The responsibilities of Maine District Court judges are similar to those of the U.S. District Courts.

Maine has been fortunate in the quality of its judges. They have endured economic privation in some instances, drawn on personal savings and private income in others, to accept appointment to the courts and to remain in judicial service. Unless compensation reforms are undertaken now, however, we cannot count on being so fortunate in the future.

* - Idaho, Montana, New Hampshire, South Dakota, Vermont, West Virginia, Wyoming

In considering the question of compensation for the judiciary, it is essential to remember that appointments to the courts are unlike election to public office, appointment to senior positions in state government, or selection of an employee or a partner in a private firm. We expect judges to devote full energy and attention to the cause of justice, to eliminate personal, professional or economic interests that could conflict with the exercise of independent and dispassionate judgment in criminal and civil matters.

We do not expect judges to accept appointment to the courts in order to achieve their full economic potential. We cannot, however, expect them to achieve their full potential as judges, if their economic position is eroded by inadequate compensation to the point where their personal and family financial concerns are a distraction.

We expect judges to make a lifetime commitment to the courts, in the tradition of an independent judiciary. We will not have an independent judiciary, if judges must become supplicants to the Legislature for reasonable compensation.

Retirement benefits are an integral part of Maine's judiciary compensation program. The Maine retirement system for the judiciary is currently a non-contributory plan, which the State funds on a pay-as-you-go annual appropriation. There is no vesting and there is no portability under the plan. A judge may retire under the plan at age 60 if he or she has 20 years of service as a judge, at age 65 if he or she has 12 years of service, and at age 70 if he or she has seven years of service. The benefit is 75% of the current salary of the position from which he or she retired. Qualified survivors of retired judges receive one-half the benefit. When the Supreme Judicial Court determines that a judge is disabled, the judge receives full retirement benefits as a disability pension, regardless of years of service.

In reviewing the retirement program the Commission found that it needs reform. It is apparent that the relatively generous provisions of the retirement system for those judges who qualify under the plan was developed as partial compensation for the relatively low salaries paid judges during their active service. Continuing those provisions under a more realistic salary system would be neither desirable nor necessary. A reformed retirement benefit system should also eliminate the discriminatory aspects of the present system, whose eligibility requirements can discourage younger lawyers from serving as judges. The perverse vesting requirements of the present non-contributory system create barriers for some judges to step down prior to becoming eligible for retirement, short of actual disability. Those requirements also inhibit governors from dropping judges whose performance may fall short of the high standards that should apply to the courts.

Devising an alternative to the present retirement system would not be difficult, if it were not for the constitutional bar against a form of compensation the Legislature has already provided the judiciary. The Commission has been confronted with the need to develop a long-term proposal and transitional arrangements that are fair to the judges and to address the constitutional questions.

Recommendations

The Commission's recommendations for judicial compensation reform have been developed as a complete plan in which the salary and retirement provisions are fully integrated. Enactment of the salary provisions without the retirement benefit reform would be fiscally imprudent. Enactment of the retirement benefit provisions without the salary reform would be unfair to the justices and judges, and probably unconstitutional. Failure to enact the Commission's recommendations would perpetuate an inadequate compensation system for the judiciary that is unfair to those who serve in our courts, a discouragement to talented lawyers governors may wish to appoint and a threat to the strength and quality of our judicial system.

Salary Recommendations

The Commission recommends that Maine set a goal of compensating its justices and judges at a level comparable with judges of similar responsibility in the federal court system, and that the Legislature authorize increases in judicial salaries to achieve comparability with the pertinent federal salaries by Fiscal Year 1987.

It should be noted that the Commission's recommendations would still leave the Chief Justice of the Supreme Judicial Court with a salary that, in 1987, would only approximate the median professional income of a lawyer in a law firm of six partners or more as of 1982, with the other justices and judges below that figure. Furthermore, the judicial salaries projected for Fiscal Year 1985 for all justices and judges would be within the salary range for Grade 91 (which includes all commissioners of major executive branch departments) as recommended by the Governor and adopted by the Legislature in the current session.

Specific recommendations are as follows:

Chief Justice, Supreme Judicial Court

current	\$ 46,514		(The FY 1987 goal is for the
FY 1985	58,064	(+25%)	Chief Justice to be paid a
FY 1986	69,614	(+20%)	salary = 1.05 x 1984 Federal
FY 1987	81,165	(+17%)	Court of Appeals Judge salary)

Associate Justice, Supreme Judicial Court

current	\$ 44,431		(The FY 1987 goal is for each
FY 1985	55,387	(+25%)	Associate Justice to be paid a
FY 1986	66,343	(+20%)	salary = 1984 Federal Court of
FY 1987	77,300	(+17%)	Appeals Judge salary)

Chief Justice, Superior Court

current	\$ 44,836		(The FY 1987 goal is for the
FY 1985	56,200	(+25%)	Chief Justice to be paid a
FY 1986	66,478	(+18%)	salary = 1.05 x a Federal District
FY 1987	76,755	(+16%)	Judge salary)

Justice, Superior Court

current	\$ 43,736		(The FY 1987 goal is for each
FY 1985	53,524	(+22%)	Justice to be paid a salary
FY 1986	63,312	(+18%)	= a Federal District Judge salary)
FY 1987	73,100	(+15%)	

Chief Judge, District Court

current	\$ 43,816		(The FY 1987 goal is for the
FY 1985	54,021	(+23%)	Chief Judge to be paid a
FY 1986	63,853	(+18%)	salary = 1.05 x Maine District
FY 1987	73,685	(+15%)	Judge salary)

Deputy Chief Judge, District Court

current	\$ 42,586		(The FY 1987 goal is for the
FY 1985	52,735	(+24%)	Deputy Chief Judge to be paid a
FY 1986	62,332	(+18%)	salary = 1.025 x Maine District
FY 1987	71,930	(+15%)	Judge salary)

Judge, District Court

current	\$ 42,086		(The FY 1987 goal is for each
FY 1985	51,449	(+22%)	Judge to be paid a salary =
FY 1986	60,812	(+18%)	.96 x Federal District Court
FY 1987	70,176	(+15%)	Judge salary)

These recommendations maintain existing relationships among the compensation levels for the several judicial positions.

Retirement Benefit Recommendations

Basic Retirement Benefit Reform Plan

The Commission recommends adoption of the following retirement benefit plan as part of a judicial compensation reform program:

1. That a retirement benefit plan for Maine justices and judges be established on an actuarially sound basis and be administered by the State Retirement System. That the justices and judges contribute the same percentage of salary (presently 6.5%) as state employees contribute under the State Retirement System. The State would fund the balance of the contribution required under the actuarial plan for the judiciary. The State would also have to fund the contingent liability for the retirement benefits for justices and judges now retired and for that portion of retirement benefits due justices and judges during a transition period for service under the present plan (see the transition proposal below).

2. That justices and judges vest rights on the retirement plan at 10 years of service or at age 70, whichever occurs sooner, with years of other state service usable for vesting credit, but not for calculating benefits under the judicial retirement system.

3. That vested justices and judges be eligible for retirement at age 60, or at any age with 25 years of service (with an actuarial reduction of benefits for each year under age 60).

4. That benefits be calculated at $2\% \times \text{Average Final Compensation (AFC)} \times \text{years of service}$ under the new plan, with a maximum benefit of $.60 \times \text{AFC}$. Justices and judges should be permitted the same benefit options for reduced benefits to the retiree and remainder benefits to the surviving spouse or designated beneficiary as are available under the State Retirement System. A cost of living escalator, comparable with the State Retirement System, should be included.

5. Disability benefits should be the same as those provided State employees, set at $66.7\% \times \text{AFC}$ and terminated upon the end of disability. Disability benefits would switch to retirement benefits 10 years after normal retirement age.

6. Survivor benefits should be the same as those paid under the State Retirement System: (a) a lump sum return of contributions or designated benefit for the beneficiary of a justice or judge who died before eligibility for retirement; or (b) actuarially determined benefits for the beneficiary of a justice or judge who was eligible for retirement, but had not yet retired.

* - Average Final Compensation (AFC) is defined as the average of the three highest salaried years. In this case, the average would be calculated from the effective date of the new plan.

7. That a justice or judge may elect to serve beyond age 70, but on retirement may receive only those benefits for which he or she was eligible at age 70.

It should be noted that there are only two significant differences between the proposed plan for justices and judges and that which now applies to State employees. The first is the .60 x AFC limit on judicial retirement benefits. The Commission believes that ceiling is warranted by the proposed salary levels. It does not pose a serious problem for justices and judges, since the 60% limit would be achieved only after 30 years of judicial service. In addition, the proposed plan allows for benefit increases to compensate for increases in the cost of living. Second, the proposed plan provides that a justice or judge may not retire while in service with less than 10 years service until he or she reaches age 70. (The State employee plan allows in-service retirement at age 60.)

Retirement Benefits Plan Conversion

As pointed out earlier, there are constitutional prohibitions against reducing compensation in effect for active or retired judges. There are also technical problems for achieving fair retirement benefits for justices and judges retiring during the transition from the present system to the proposed new salary and pension plan. The Commission has developed proposals that balance new salary benefits, improved vesting features and retirement credits that it believes overcome those problems.

The Commission recommends the following transition provisions:

1. That justices and judges appointed subsequent to the effective date of the new plan receive benefits under the new plan only.

2. That justices and judges who have retired prior to the effective date of the new plan receive benefits set at 75% of the salary for the post from which they retired, as of the date just prior to the effective date of the new judicial compensation plan, with an automatic 6% per annum increase in the "salary base" on which the benefit is calculated in each year following the effective date of the new plan. Those provisions would make the benefits for judges already retired consistent with what they could reasonably anticipate under a continuation of the old compensation system.

3. That justices and judges appointed prior to and serving after the effective date of the new compensation plan receive the following benefits:

(a) credit for service under the prior compensation system in calculating vesting for the new plan;

(b) eligibility for retirement would occur at 70 years or 10 years of judicial service, whichever occurs sooner;

(c) retirement benefits for justices and judges in this category would be calculated as follows:

- (i) a base benefit for service under the prior compensation system, calculated as follows: years of service \div 10 (to a maximum value of 1.0) x .75 x annual salary as of the date just prior to the effective date of the new compensation plan); plus
- (ii) benefits earned under the new plan (.02 x AFC x years of service under the new plan);
- (iii) total benefits not to exceed .60 x AFC.

(d) justices and judges who are 55 years of age or older as of the effective date of the new compensation system would have their retirement benefits calculated as under 3(c) above; since their opportunity to benefit under the new plan is limited, however, justices and judges in this age group, notwithstanding the 60% limitation in (c) (iii) above, would be guaranteed a pro rated minimum benefit, which would be equal to .75 x actual annual salary as of the date just prior to the effective date of the new compensation plan x 1.06 for each year of service under the new plan through the third fiscal year of the new plan, and x cost of living allowance (up to 1.04) for each subsequent year of service in which a cost of living allowance is provided by the State Retirement System.

(e) justices and judges retiring under the transitional plan would also be eligible for all the general benefit provisions applicable under the new plan, including benefit increases to compensate for increases in the cost of living following the date of retirement.

Non-separability

The Commission recommends, as noted above, that the proposed judicial salary and benefit plan changes be enacted as a comprehensive judicial compensation reform program. The legislation implementing the proposal should include a non-separability clause, so that a successful constitutional challenge to any part of the plan would nullify the entire act and require revision of the entire judicial compensation plan.

Other Issues Related to Judicial Compensation

Several appointed positions in State government are tied to judicial compensation. Those include the Attorney General, Public Utilities Commissioners and full-time Workers' Compensation Commissioners. The Commission recommends that, as in the case of the Attorney General under the proposals for new salary ranges for constitutional officers, the Public Utilities Commissioners and Workers' Compensation Commissioners be moved in two steps to salary range Grade 91. Further study is needed to determine the appropriate level for each of those positions within the grade.

GOVERNOR

The Commission conducted a preliminary review of gubernatorial compensation and concluded it would take considerably more time than the Commission had available to analyze and evaluate the Governor's compensation. Noting that the Legislature enacted an increase in the Governor's salary to \$50,000 per year, effective in January 1987, the Commission recommends that a careful analysis be undertaken in preparation for a proposal to the 112th Legislature.

CLERK AND ASSISTANT CLERK OF THE HOUSE, SECRETARY AND ASSISTANT
SECRETARY OF THE SENATE

The Commission has reviewed the job descriptions and functions of the four positions. There have been no significant changes in the positions since the previous Commission's report. Therefore, the Commission recommends continuing the compensation grade level in effect for the next two years, adjusting the actual salaries as State compensation levels change.

LEGISLATIVE STAFF

The Commission has become aware of some areas of concern in legislative staff compensation. We have not had an opportunity to examine them in detail, but recommend that attention be given to those problems in time for consideration of proposed changes in the 112th Legislature.

CONCLUSIONS

As noted above, there are several items that the Commission was unable to resolve in the time available to it within the second regular session of the 11th Legislature. The Commission members are prepared to continue to work on those items, if requested by the Legislature and if staff and funds are available to support the work of the Commission in preparation for a November 15, 1984, report.

Future Commissions

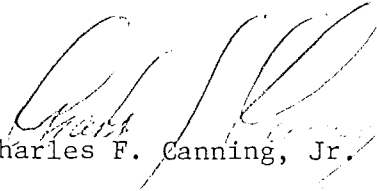
The members of the Commission have appreciated the opportunity to assist the Legislature in the difficult but important issues presented to them.

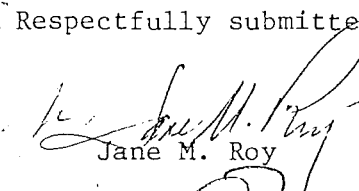
It is apparent that the question of compensation for state judicial, executive branch, constitutional officers and legislators will need repeated analysis, adjustment and improvement. The work of future commissions can be facilitated by modest changes in the statute.

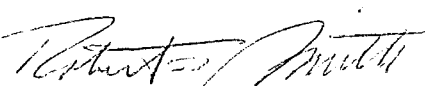
This Commission has been hampered in its work by two factors: the very complicated problem of judicial retirement benefits that was unanticipated; and the very limited time available to the Commission and its staff between the time of the Commission appointments, the official due date for its report and the close of the second regular session of the Legislature.

The Commission recommends that the next Compensation Commission be appointed in January 1985, that its final report not be due until November 15, 1986, and that it be directed to file interim reports in both regular sessions of the 12th Legislature.

Respectfully submitted,


Charles F. Canning, Jr.


Jane M. Roy


Robert M. Smith


Donald E. Nicoll, Chairman