

MAINE STATE LEGISLATURE

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January 19, 1967

Henry L. Cranshaw, State Controller

Accounts and Control

James S. Erwin, Attorney General

Attorney General

This is in reply to your question by memorandum of even date herewith.

The facts are these:

By memorandum dated January 5, 1967 I informed Secretary of State Edgar that in my opinion the tenure of Deputy Secretary of State Ross had expired with the tenure of former Secretary of State Curtis. I also stated that thereafter the office of Deputy Secretary of State was vacant and Mr. Edgar could appoint whom he pleased.

Subsequently, Mr. Edgar appointed Stanley Hanson as his Deputy Secretary of State.

On January 18, 1967 I gave a written opinion to Willard Harris, Director of Personnel, that except for appointment procedures and tenure the office of Deputy Secretary of State was subject to the personnel law. The office of Deputy Secretary of State is classified service now by law.

The provisions of Title 5, section 11 of M.R.S.A. require certification of a payroll or account by the Director of Personnel before a warrant for payment or actual payment to any person can be made.

This same section also provides for recovery for wrongful payment made to a person appointed or established in his position contrary to Chapters 51 to 61 of said Title 5.

The Secretary of State is an "Appointing Authority" as the term is used in Title 5, section 552. The Constitution of Maine by Article V, section 2, gives him the power to appoint his deputies.

In my opinion, the term of Deputy Secretary Ross having expired as previously noted, Secretary Edgar was within his rights when he appointed Deputy Secretary of State Hanson.

The Personnel Board has acted to certify the position and classify it.

In my opinion no violation of Title 5, section 11 has taken place and your office would be legally justified to authorize the payment of Deputy Secretary of State Hanson's salary.

The whole point of Civil Service, which the Legislature of Maine has provided by enactment of the Personnel Law, is to protect individual classified employees from arbitrary action by their department heads or anyone else.

I have ruled Mr. Hanson has been properly appointed. He is, without question, in classified service and subject to the provisions of the Personnel Law with the exceptions noted above. Clearly, the Governor, who is not an "Appointing Authority" in the Department of the Secretary of State, is without power to order withholding of wages of the newly appointed Deputy Secretary of State.

James S. Erwin
Attorney General

JSE:H