

# MAINE STATE LEGISLATURE

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November 15, 1968

Samuel Hinds, Acting Chairman  
Legislative Research Committee  
20 Spencer Street  
Ellsworth, Maine

Dear Sam:

SYLLABUS:

A member of the Legislature is not eligible for the office of Assistant Legislative Finance Officer during his term in the Legislature where the salary has been increased during his term. The salary is now determined by the Governor, with the advice and consent of the Council within the limit set by the statute.

FACTS:

A member of the House of Representatives of the 103rd Legislature, who is also a member of the Legislative Research Committee, is a candidate for the position of Assistant Legislative Finance Officer. The committee wishes to know if that applicant is now eligible. The committee also wishes to know who determines the salary of the Assistant Legislative Finance Officer.

The salary for the office was last increased, effective January 1, 1968. This was the result of P. & S.L. 1967 ch. 191, enacted by the 103rd Legislature.

QUESTIONS:

1. Is a member of the 103rd Legislature and the Legislative Research Committee presently eligible to be the Assistant Legislative Finance Officer?
2. Who sets the salary of the Assistant Legislative Finance Officer?

ANSWERS:

1. No.
2. Governor with the advice and consent of the Council.

REASON:

The office of Assistant Legislative Finance Officer was created by P.L. 1965, ch. 425, § 2-D, which added a paragraph to 3 M.R.S.A. § 163, 15-D. The language has not been changed.

"The Legislative Research Committee shall appoint an assistant finance officer to assist the Finance Officer in carrying out his duties. He shall be chosen without reference to party affiliation and solely on the grounds of fitness to perform the duties of his office. He shall hold office for 6 years from the date of his appointment and until his successor has been appointed and qualified. His salary shall be determined by the Legislative Research Committee."

The Constitution of Maine Article IV, Part Third, Section 10, provides:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people."

The applicant being a member of the Legislature and the emoluments of the office having been increased during the term for which he was elected, he is not eligible for the office until after the term for which he was elected.

In short, the applicant cannot be appointed until January 1, 1968. The appointment cannot be retroactive. It must be for 6 years from the date it is made.

When this office was created, the statute read:

"His salary shall be determined by the Legislative Research Committee"

That sentence has never been directly repealed. The Legislature, however, enacted P.L. 1967, ch. 542, which authorized the Governor, with the advice and consent of the Council, to adjust the salary of various state officials. Among them was the Assistant Legislative Finance Officer. The enactment became effective April 26, 1968.

Chapter 542 was enacted subsequent to 3 M.R.S.A. § 163, 15, D, and being in conflict constitutes an implied repeal thereof. The Governor, with the advice and consent of the Council, determines the salary of the Assistant Legislative Finance Officer within the limit set by the statute.

Very truly yours,

George C. West  
Deputy Attorney General

GCW:H