

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

pecuniary gain, rather than some imponderable and contingent benefit, can hardly be questioned.” *Id.*, 175.

We now take up the matter of mileage allowances, otherwise known as travel expenses, and advise that such allowances are not emoluments within the meaning of that term as used in the subject constitutional sense. Our position is grounded upon authorities such as *Spearman v. Williams* (1966), Okla., 415 P.2d 597, where it was decided that expenses incurred by members of a legislative council for office rent and travel were not salary or emolument within the meaning of constitutional provisions prohibiting members of the legislature from receiving compensation other than salary or emoluments.

Courts generally hold that travel expenses incurred by public employees “are expenses of the performance of official duties and are not compensation, salary or emoluments * * *.” *Ibid.* After all, the only object of an allowance of expenses is to preserve the officer’s salary to him free of encroachments thereon, through expenses imposed by his official position. *McCoy v. Handlin*, 35 S.D. 487, 153 N.W. 361.

JOHN W. BENOIT, JR.
Assistant Attorney General

April 9, 1969
Legislative Finance

William H. Garside, Legis. Fin. Officer

SYLLABUS:

Language in the Appropriation Act stating that job reclassifications must not result in an increased request for funds from legislature can prevent upward reclassifications unless accompanied by comparable amount of downward reclassification.

FACTS:

In the fourth paragraph of the 1967 General Fund Appropriation Act, P. & S. L. 1967, Chapter 154, and the third paragraph of the General Fund Appropriation Act, P. & S. L. 1967, Chapter 225, is the following language:

“To provide some degree of flexibility, each department, institution or agency may apply to the Personnel Board for an exchange between job classifications, and such action may be approved if by so doing the total amount determined to be available for Personal Services, in such account, for any one year is not exceeded, and also providing that certification is made, in writing, that such action will not result in an increased request for Personal Service moneys from the Legislature.”

QUESTION:

Does the quoted language prevent reclassification and range changes?

ANSWER:

See REASONS.

REASONS:

The portion of the above quotation that raises the question, "and also providing that certification is made, in writing, that such action will not result in an increased request for Personal Service moneys from the Legislature" first appeared in the 1965 General Fund Appropriation Act, P. & S. L. 1965, Chapters 78 and 159. This added provision changed the meaning of the provision as it had previously been written. As a matter of fact, this additional clause virtually nullified the original language. Previously, the Legislature had said that departments could reclassify positions and move personnel into new positions as long as money was available within the appropriation.

The new language which was added said that reclassification and moving of positions not only must be done within the money appropriated, but in such a manner as not to result in an increased request for funds from future Legislatures. This means that reclassifications upward are virtually stopped. Any reclassification of a position upward would necessarily cause an increase request for funds in the future, except insofar as a department may also lower job classifications on sufficient positions to offset any upward reclassifications.

GEORGE C. WEST
Deputy Attorney General

April 22, 1969
Real Estate Commission

Leo M. Carignan, Exec. Secretary

Publication of Enforcement Information under 32 M.R.S.A. § 4057

SYLLABUS:

Maine Real Estate Commission may publish information relative to the enforcement of their laws which it deems of interest to the public.

FACTS:

The Real Estate Commission feels that in the best interest of its licensees it will publish in its quarterly newsletter information relative to recent cases which involved enforcement of its license laws.

QUESTION:

May the Commission publish in its quarterly newsletter the pleadings and decisions in such cases.

ANSWER:

Yes. .

REASON:

The Commission may publish what it deems of interest to the public relative to