

# MAINE STATE LEGISLATURE

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GCM      JCS

July 29, 1971

Nicholas L. Caraganis, Director

Personnel

George C. West, Deputy

Attorney General

Clarification to Preamble of P. & S. Laws 1971, Chapters 91, 117 & 146.

In your memo of June 21, 1971 you asked three questions seeking clarification of certain language which appears in all three chapters above cited. In order to properly interpret the sentence you quote, it is necessary to quote the previous and succeeding sentences. The three sentences are:

"Savings accruing within appropriations made for permanent positions may be used for other non-recurring personal services when recommended by the department head and the Budget Officer, and approved by the Governor and Council. 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 made 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 monies from the next Legislature. Copies of all Personnel Board action relating to such changes shall be furnished to the Legislative Finance Office."

The first question is:

1. In an exchange between job classifications can a vacant position be downgraded or abolished to provide funds for the upgrading of another position, a salary range change, or a special merit increase, provided the total amount determined to be made available to Personal Services, in such account, for any one year is not exceeded and provided that certification is made, in writing, that such action will not result in an increased request for Personal Service monies from the next Legislature?

First, we must eliminate from the question those phrases "a salary range change, or a special merit increase". Those two phrases do not appear in any of the three preambles cited and do not come within the phrase "exchange between job classifications". See opinion dated September 29, 1969.

We can then answer the remaining part of the question in the affirmative. The Legislature has in effect said by the quote, supra, that "savings" accruing by downgrading or abolishing positions may be used to upgrade other positions within the stated limitations. It makes no difference if the downgraded or abolished positions are vacant or filled. That decision is for the employing authority.

The second question is:

2. Do the above quoted Chapters of the P. & S.L. 1971 apply only to those positions in the General Fund accounts, or to all positions no matter how funded?

This question is answered by our opinion dated September 5, 1969 to David H. Stevens, Chairman, State Highway Commission, a copy of which is in your files. The preambles relate only to General Fund accounts.

The Third question is:

3. Will the following statement, incorporated as part of the requisition form and signed by the proper official of the department, institution or agency involved, suffice for the certification in writing as indicated in above Chapters? "I certify that the expenditure of funds involved in the above personnel action will not exceed the amount provided by the legislature for Personal Services during the current year, nor will it result in an increased request for Personal Service monies from the next Legislature."

The answer is in the affirmative. Certainly the statement is proper for the employing authority to sign. However, we interpret the quoted language as requiring certification not only to the Personnel Board but by the Board as well.

The Personnel Board has a duty to determine (1) that the increase will not exceed the money available to the department and (2) the action will not result in an increased request for Personal Services monies from the next Legislature. This duty is imposed upon the Board by the language in the second sentence reading "such action may be approved if by so doing the total amount determined. . . and also providing that certification is made, in writing, . . ." The latter clause

does not mean that a department may not request more money. It means that the request for more money, if made, does not result from the reclassification approved by the Board.

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GEORGE C. WEST  
Deputy Attorney General

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