

# MAINE STATE LEGISLATURE

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INTER-OFFICE MEMORANDUM

Date: April 5, 1972

To: James C. Schoenthaler, Chairman

Office:

From: Frank A. Farrington, Assistant Attorney General

Office:

Merrill A. Tracey, Assistant Attorney General

Subject: Your Memorandum of March 31, 1972, Requesting a Legal Opinion re Section 1221, 4, C of the Employment Security Law

SYLLABUS:

A Maine Employment Security Commission decision to implement the emergency provisions of Section 1221, subsection 4, paragraph C of the Maine Employment Security Law must be made while the net balance available for benefit payments equals or is less than the amount set forth in said paragraph C as the basis for such action.

The emergency authority given to Maine Employment Security Commission to increase rates by aforesaid paragraph C includes the authority to make increases or decreases in such increased rates while the declared emergency still exists, up to the date set for the next computation of rates.

FACTS:

Section 1221, subsection 4, paragraph C of the Employment Security Law reads as follows:

"C. If at any time, from January 1, 1972 to December 31, 1972, the net balance available for benefit payments equals or is less than \$15,000,000; or from January 1, 1973 to December 31, 1973 the net balance available for benefit payments equals or is less than \$17,500,000, or on and after January 1, 1974 the net balance available for benefit payments equals or is less than \$20,000,000; and, in the opinion of the commission, an emergency exists such as to seriously impair the fund, the commission may, after reasonable notices and public hearing, forthwith impose the rates shown in column F of the schedule carried in paragraph B and, in addition thereto, increase such rates by not more than .5% and continue said rates, and additions thereto, in force until, in the opinion of the commission, such emergency no longer exists, or until the date set by this chapter for the computation of rates, whichever is earlier."

Section 1043, subsection 14 defines fund as used in the Maine Employment Security Law:

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"14. Fund. 'Fund' means the Unemployment Compensation Fund to which all contributions required and from which all benefits provided under this chapter shall be paid."

QUESTIONS:

- "1. Must a Commission decision to implement the provisions of Section 1221, 4, C be made while the net balance available for benefit payments equals or is less than the effective amount indicated in the paragraph?
- "2. If a Commission decision is made to impose the rates shown in column F of the schedule carried in paragraph B, and in addition thereto, to increase such rates up to .5% for a future period, can the Commission remove its surcharge action without nullifying the action to impose schedule F?
- "3. Does the Commission have the latitude to modify the amount of surcharge tax imposed under the provisions of Section 1221, 4, C?"

ANSWERS:

Question 1. Yes.

Question 2. Yes.

Question 3. Yes.

REASONS:

Question No. 1.

Above-quoted Section 1221, subsection 4, paragraph C gives the Commission authority to increase contribution rates under the provisions set forth therein, when in its opinion an emergency exists such as to seriously impair the fund.

By its terms, action to exercise that authority must be taken when the net balance available for benefit payments equals or is less than a fixed amount, that amount to be determined by the calendar year in which such action is to be taken.

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Question No. 2.

When the Commission has taken proper action imposing an increase in rates, it may continue the rates in column F and additions thereto in force until the date set by the Employment Security Law for computation of rates, unless at an earlier date it finds that in its opinion an emergency no longer exists.

During the period the increase in rates remains in effect, the statute does not deny the Commission the authority to decrease the rates it may have originally established, over and above those contained in column F.

It is logical to assume that the legislative intent was to allow the Commission to decrease the additional increase, if that additional increase proves to be too high.

Such action could be taken without nullifying the action to impose column F of the schedule carried in paragraph B.

Question No. 3.

When asking whether the Commission has the latitude to modify the amount of surcharge, it is assumed that the intent was to ask whether the surcharge could be increased or decreased.

In stating reasons for the affirmative answer to Question No. 2, it was said that the statute does not deny the Commission the authority to decrease the rates it may have originally established, over and above those contained in column F, during the period such increase in rates remains in effect.

Neither does the statute deny the Commission the authority to increase such rates, up to .5%.

It is equally logical to assume that the legislative intent was to allow the Commission to increase such rates, if that additional increase proves to be too low.

PAF:e

cc - Mr. Cote

Mr. George

Attorney General