

# MAINE STATE LEGISLATURE

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GCW JSE  
May 18, 1972

Nicholas L. Caraganis, Director

Personnel

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SYLLABUS:

The preambles to the Appropriation Acts passed by the 105th Legislature apply only to General Fund appropriations made in the Acts. The Stabilization program regulations do not allow pay increases for at least one year after October 1, 1971 (being one year after the last increase).

FACTS:

The Director of the Motor Vehicle Division seeks a range change upwards for the position of Motor Vehicle Investigator. He states that he requested such a change in his Part II budget. He justifies the request as being in lieu of a clothing allowance. He states the legislature did grant the sum of \$50,000 for each year of the bi-ennium to fund a portion of the division's personnel request. Included in that sum would be \$1742 each year to cover the cost of the range change.

Funds for the Motor Vehicle Division are provided by Private and Special Laws 1971, Chapter 145, An Act to Make Allocations from the General Highway Fund for the Fiscal Years Ending June 30, 1972 and June 30, 1973. The allocation appears under the heading General Administration in the following manner:

	<u>1971-72</u>	<u>1972-73</u>
Secretary of State - Motor Vehicle Division	\$2,400,818	\$1,776,227

QUESTION NO. 1:

What is the Board's authority to grant such a range change in view of the preamble of the cited P&S Laws?

QUESTION NO. 2:

Is there any conflict (is this action permissible) in the light of OEP Guidelines?

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QUESTION NO. 3:

What is the Board's authority to authorize range changes generally in view of preamble to the cited P&S Laws which seems to dictate the mandate that no personnel action shall be taken that will result in increased requests for Personal Service monies from the next Legislature?

QUESTION NO. 4:

What is the Board's authority to authorize range changes generally in view of OEP Wage/Price Guidelines?

QUESTION NO. 5:

What is the Board's rationale for authorizing a range change which is, in effect, a clothing allowance or authorization of what is tantamount to a prerequisite?

ANSWER NO. 1: See Reasons

ANSWER NO. 2: Yes

ANSWER NO. 3: See Reasons

ANSWER NO. 4: See Answer and Reasons to No. 2.

ANSWER NO. 5: See Reasons

REASONS NO. 1:

The preambles to P. & S. L. 1971, Chapters 91, 117, 146 and 179, are not applicable to the Motor Vehicle Division. See attached opinion dated September 5, 1969. Also note that none of the Appropriation Acts nor the Highway Allocation Act contain any provision such as appeared in P. & S. L. 1969, Chapter 154, Section C. Hence, the preambles to the four appropriation acts do not prevent the Board from granting the request.

REASONS NO. 2:

The request for a range change for 5 Motor Vehicle Investigators, according to the Stabilization Program regulations constitutes an attempt to seek an increase or raise in pay. The reasoning is that the reason given is to compensate the individuals for cost of clothing. It is not a situation where the 5 investigators have been

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given more duties or greater responsibilities. If that were the reason, it could be considered a promotion and probably allowable.

The State employees having had an 11½% increase effective October 1, 1971, are not now eligible for another increase in pay until, at least, October 1, 1972. The situation must be re-examined at that time to determine if there has been any change in the rules of the Stabilization Program.

REASONS NO. 3 and 4:

These questions are most difficult to understand and answer. I believe that question No. 4 is answered by the answer to No. 2.

As to question No. 3, a general answer with no factual basis is of no value to the board. I believe that a range change upward cannot be effected without some downward range change to offset the added cost. There can be little or no difference between the range change and a reclassification. Both accomplish the same objective as far as the individual is concerned. The only different result is that a range change could upset the balance of the whole personnel pay schedule. A reclassification does not.

REASON NO. 5:

Your question assumes you can grant the request, which you cannot. Also, it is not really a legal question. It is in substance a matter of personnel philosophy. We cannot answer it.

George C. West  
Deputy Attorney General

GCW:H  
Enclosure