

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 13, 1972

Col. Parker F. Hennessey, Commissioner Dept. Public Safety

From William Brodrick, Asst. Atty. Gen. Dept. Attorney General
Subject Whether Retired State Police Chiefs are entitled to an increase in pension benefits under the Automatic Acceleration Statute.

SYLLABUS:

Retired State Police Chiefs are not entitled to an increase in pension benefits under the Automatic Acceleration Statutes (P.L. 1951, C. 212, amended by P.L. 1953, C. 166) because of the raise given the present State Police Chief when he assumed the added duties of Commissioner of Public Safety.

FACTS:

The current State Police Chief received additional compensation when appointed Public Safety Commissioner under the Reorganization Statute 25 M.R.S.A. § 1501. This statute establishes two separate jobs, Commissioner of Public Safety and Chief of the State Police. In return for acting as Commissioner of Public Safety, the present Maine State Chief of Police was given an increase in salary. The Automatic Acceleration Statute provides that retired chiefs' pensions will be determined by the salary "now paid to a member of their respective grades at the time of retirement."

The inquiry addressed to this office is whether or not the retired State Police Chiefs are entitled to the same increase that the present Chief of the Maine State Police received for assuming the additional duty of Public Safety Commissioner.

QUESTION:

Are the retired State Police Chiefs entitled to an increase in pension benefits under the Automatic Acceleration Statute because of the raise given the present State Police Chief when he assumed the additional duties of Commissioner of Public Safety?

ANSWER:

No.

EXPLANATION:

The current State Police Chief received additional compensation when he was appointed Public Safety Commissioner because he

is now wearing two hats. Reorganization Statute 25 M.R.S.A. §1501 establishes Commissioner of Public Safety and Chief of the State Police as two distinct jobs. Section 1501 gives the Governor the power to appoint the same man to both jobs, but this is a purely discretionary power. The Governor could have appointed a man other than the Chief to be Commissioner. If he had, the Chief would not have been entitled to a raise. This conclusion is supported by Executive Order 1740 (August 2, 1972), which lists the assumption of new responsibilities as the sole reason for the Chief's increase in salary. Take these new responsibilities away from the Chief in 1976, as the Governor is permitted to do under Section 1501, and the Chief's salary increase could be cancelled.

Given the statutory distinction in the two jobs and the specificity of the executive order in regard to the reason for the Chief's salary increase, the State Police Acceleration Clause does not benefit retired chiefs in this instance. The clause states that retired chiefs' pensions will be determined by the salary "now paid to a member of their respective grades at the time of retirement." The language "pay ... of their respective grade" limits the acceleration clause to the salary earned by the current chief when he is working as chief. But as explained above, the current Chief does not always function as Chief. He receives, in effect, two salaries: One for the responsibilities he assumes as Chief, and one for the responsibilities he assumes as Commissioner. The retired chiefs can benefit only from increases in the former salary. And the Governor and Council have specified that the increase on this occasion is connected solely with the latter salary.

WILLIAM BRODRICK
Assistant Attorney General

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