

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

Inter-Departmental Memorandum Date 14 March 1973

To: William F. Kearns, Jr., Commissioner

Dept. Mental Health and Corrections

From: William J. Kelleher, Ass't. Atty. Gen'l.

Dept. Mental Health and Corrections

Subject: _____

SYLLABUS:

The Commissioner of Mental Health and Corrections, with the approval of the Governor and the Executive Council has the responsibility to set salaries for physicians, psychologists, and psychiatric social workers employed by the Department of Mental Health and Corrections, and he may do so without regard to the longevity provisions of the State Personnel law.

FACTS:

The Commissioner of the Department of Mental Health and Corrections, with the approval of the Governor and the Executive Council, under the authority of Chapter 549, Public Law 1969, has the authority and responsibility to set the salaries of physicians, psychologists, or psychiatric social workers employed by that department. There exists a question concerning the applicability of longevity pay increases as mandated by Chapter 202, Private and Special Law 1963 to these classifications.

QUESTION:

Must the salary of a physician, psychologist or psychiatric social worker employed by the Department of Mental Health and Corrections be increased due to longevity?

ANSWER:

No.

REASON:

The question is really one of statutory interpretation. In 1963 the Legislature provided that all classified employees shall receive the benefit of

William F. Kearns, Jr., Commissioner

-2-

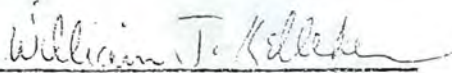
longevity increases amounting to 5% or a one step increase as provided in the State Personnel Board's Compensation Plan for Classified Positions, after completion of 8 years service and again after 15 years service. In 1969, the legislature amended Title 5 M.R.S.A., §634 by enacting c. 549, P.L. 1969, which states,

"The salary of a physician, psychologist, or psychiatric social worker, employed by the Department of Mental Health and Corrections shall be determined by the Commissioner of Mental Health and Corrections with approval of the Governor and Executive Council. The salaries paid under this provision shall not be in excess of 25% above Step E of the State of Maine Compensation Plan for each of the designated position classes under the classifications of physician, psychologist, or psychiatric social worker. In determining the salary for such positions, the commissioner and the Governor and Executive Council shall take into account prevailing salaries and fees for similar positions in other public jurisdictions and in private agencies. All other provisions of the State Personnel Law and the rules and regulations shall apply to said persons."

The question becomes, by enacting the above amendment, did the Legislature intend to entirely remove the issue of compensation from the operation of the personnel law. It seems clear that it did.

The language of the 1963 Act specifically ties the longevity increase into and makes it dependent upon the State Personnel Board's Compensation Plan. The 1970 amendment to §634 of Title 5 is equally clear in removing the classifications in question from the operation of the Personnel Board's Compensation Plan. In addition, that amendment is unequivocal in its mandate that the Commissioner of Mental Health and Corrections with approval of the Governor and Executive Council shall determine the salaries in question. This authority is not limited and if the longevity provisions were to apply, they would act as a limitation upon that authority. In addition, it must be assumed that the Legislature was aware of the longevity

provisions when it passed the 1970 amendment to §634. Since the two enactments are inconsistent with each other, "the particular provision must govern or control as a clearer and more definite expression of the legislative will..." (citations omitted). 82 Corpus Juris Secundum §347, pp. 720-721.



William J. Kelleher
William J. Kelleher
Assistant Attorney General

WJK/vv