

MAINE STATE LEGISLATURE

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JB JAL GAW ✓
April 13, 1973

Nicholas L. Caraganis, Director

Personnel

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Attorney General

Salary increase for Mental Health and Corrections Department Physician

SYLLABUS:

The Commissioner of Mental Health and Corrections can grant to a physician in his Department a salary raise from R-33, Step E (\$448 per week) to R-33, Premium Step 4 (\$544.80 per week) provided such proposed raise for that physician is expressly approved by the Governor and Council, pursuant to P.L. 1970, Chapter 549, and provided that such raise has been included in the approved budget for the Department in P & S Law 1971, Chapter 91, or that such raise is funded by an exchange in job classifications, and further provided that the aggregate raise for the employees of the mental institutions of that Department for the year July 1, 1972 to June 30, 1973, does not exceed 5 1/2%.

FACTS:

You state that your Department has been requested by the Department of Mental Health and Corrections to authorize an increase in salary payment to a Physician III from R-33, Step E (\$448 per week) to R-33, Premium Step 4 (\$544.80 per week).

You refer to (1) P.L. 1970, Chapter 549; (2) Executive Council Order #1415, dated June 24, 1970; (3) Chapter 91, Private and Special Law, 1971; and (4) Federal Wage Stabilization, Phase III.

QUESTIONS:

1. May the exceptions delineated by #1 and #2 supra be authorized?
or
2. What restrictions, if any, are imposed by items #3 and #4?
3. May this department consider your opinion as the guide to processing future similar requests.

ANSWERS:

1. Yes, but see "Reasons."
2. See "Reasons."
3. Yes.

REASONS:

Your first question is answered affirmatively, subject to full compliance with P.L. 1970, Chapter 549, as explained hereunder. P.L. 1970, Chapter 549, amended 5 M.R.S.A. § 634 by inserting therein the following provision:

"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 employees."

Executive Council Order # 1415 of June 24, 1970, provides:

"That the Commissioner of Mental Health and Corrections be and hereby is authorized to determine the salary of physicians, psychologists, and psychiatric social workers employed by the Department of Mental Health & Corrections, in accordance with and subject to salaries criteria and conditions set forth in the salary schedule and policy annexed hereto and made a part hereof.

"This order shall constitute the approval of the Governor and Executive Council authorized pursuant to Title 5, M.R.S.A. 1964, Section 634, as amended by P.L. '69, Chapter 549."

It appears that the proposed raise is not over 25% more than Step E. Accordingly, it is clear that the proposed raise would be within the power conferred upon the Commissioner by the above-quoted provision of 5 M.R.S.A. § 634, provided that such proposed raise is "approved" by the Governor and Council. Executive Order 1415 of June 24, 1970, effectively prescribes a policy for the guidance of the Commissioner in making any such raise in salary determinations to be subsequently submitted to the Governor and Council for their approval. However, Executive Order 1415 of June 24, 1970, cannot be viewed as an "approval" within the requirement of P.L. 1970, Chapter 549. That statute provides that,

"The salary of a physician . . . employed by the Department of Mental Health and Corrections shall be determined by the Commissioner of Mental Health and Corrections with the approval of the Governor and Executive Council." (emphasis supplied)

Until the name of such a physician is submitted to the Governor and Executive Council together with a proposed salary for that particular person, there is nothing to be "approved" within the meaning of that statute.

The first part of your second question requests a statement of the restrictions imposed by P & S Law, 1971, Chapter 91. That statute provides, in pertinent part:

"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 moneys from the next Legislature. Copies of all Personnel Board action relating to such changes shall be furnished to the Legislative Finance Officer."

It is apparent that the above-quoted statutory provision would prohibit funding the proposed raise from "Savings accruing within appropriations made for permanent positions. . ." It also appears that the proposed raise could be funded by "an exchange between job classifications" provided the procedure specified therefor is followed and approved by the Personnel Board. In this connection, your attention is called to a formal opinion of this Office, dated April 9, 1969, rendered by Deputy Attorney General West to Mr. Garside, Legislative Finance Officer, the Syllabus of which states:

"Language in the Appropriation Act stating that job reclassifications must not result in an increased request for funds from legislature can prevent upward reclassifications unless accompanied by comparable amount of downward reclassification."

Nicholas L. Caraganis, Director

April 13, 1973

Also, in this connection, your attention is referred to an informal opinion of this Office, dated July 29, 1971, rendered to you and signed by Deputy Attorney General West, which discusses at length the above-quoted portion of P.&S. Law, 1971, Chapter 91. The foregoing would seem to constitute all of the "restrictions" imposed upon the proposed raise by P.&S. Law, 1971, Chapter 91. Of course, it may be that the prior budget request submitted by the Department of Mental Health and Corrections included an amount for this proposed raise and that such request was approved by the Legislature and is contained in Chapter 91, P.&S. Law, 1971. However, this is a budgeting matter concerning which you should consult the Commissioner of Mental Health and Corrections, the Commissioner of Finance and Administration and the Legislative Finance Officer.

The second part of your question calls for a statement of the restrictions imposed by Federal Wage Stabilization, Phase III. That program provides the following restriction: the aggregate annual wage raise for a particular "employee unit" is limited to the standard of 5 1/2%. It appears that an announcement will be made soon as to the various State employee units and it seems likely that the individual who is the subject of your inquiry will be in the "mandatory" control unit, consisting of all the institutions in the Department of Mental Health and Corrections, except correctional institutions and the State Military and Naval Children's Home. Hence, even though the proposed raise for that individual would exceed 5 1/2%, such raise would not be barred by Federal Wage Stabilization, Phase III, provided the aggregate raise for all the employees in that unit for the control year (July 1, 1972 to June 30, 1973) does not exceed 5 1/2%.

CRL:mfe

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