

MAINE STATE LEGISLATURE

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JAC JB

yes

May 2, 1973

Honorable Deane A. Durgin
Council Chamber
State House
Augusta, Maine

Dear Deane:

SYLLABUS:

The Maine Employment Security Commission has the legal duty to administer the employment security law with certain exceptions granting some duties to the Commissioner of the Department of Manpower Affairs. Presently there is no commissioner of the Department of Manpower Affairs.

FACTS:

There has arisen some controversy between the Executive Council, the office of Commissioner of Manpower Affairs, and the M.E.S.C. As a result, you seek on behalf of the Executive Council, the opinion of the Attorney General the answer to four questions set forth below.

QUESTION NO. 1:

Does 26 M.R.S.A. § 1082, subsection 1, give the two (2) members of the Commission (other than the Chairman) the right to participate in all of the administrative matters including the employment of Agency personnel, the preparation of the Agency budget, etc.?

QUESTION NO. 2:

Does 26 M.R.S.A. § 1082, subsection 4 conflict with subsection 1 supra with respect to appointment of Agency personnel?

QUESTION NO. 3:

Whether or not the current Chairman of the Employment Security Commission is legally the Commissioner of Manpower Affairs in view of the fact that he has not been confirmed by the Council?

QUESTION NO. 4:

A general interpretation of the statute with respect to the administrative authority of the members of the Commission is also requested.

ANSWER NO. 1:

See Reasons.

ANSWER NO. 2:

No.

ANSWER NO. 3:

No.

ANSWER NO. 4:

See Reasons.

REASONS:

We will answer each question separately so far as possible. There may be an overlapping between the answers to questions 1 and 4.

QUESTION NO. 1:

Title 26 M.R.S.A. § 1082, subsection 1, provides in part:

"It shall be the duty of the Commission to administer this chapter. It shall have power and authority to adopt, amend or rescind regulations as provided in subsection 2, to employ such persons, make such expenditures, require such reports, make such investigations and take such other action as it deems necessary or suitable to that end."

(Emphasis supplied).

The last sentence of the subsection authorizes the Commission when it believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund to inform the Governor and the Legislature and make recommendations with respect thereto.

This subsection gives the power and authority relative to promulgating regulations, employing personnel, making expenditures and other matters stated in subsection 1 to the Commission.

QUESTION NO. 2:

Subsection 4 of the same section and title states:

"Subject to other provisions of this chapter, the Commissioner of Manpower Affairs is authorized to appoint and prescribe the duties and powers of, and fix the compensation of such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of his duties, subject to the Personnel Law." (Emphasis supplied).

It is to be noted that the duties of the Commissioner of Manpower Affairs are explicitly "subject to other provisions of this chapter." This right to appoint and prescribe the duties and powers of personnel is subject to the Commission's right to "employ such persons . . . as it deems necessary or suitable to that end." Namely, to "administer this chapter." The duties of the Commissioner of Manpower being "subject to other provisions of this chapter" means that he takes only those actions approved by the Commission. His duties are not "executive" they are "ministerial" in nature.

We further note in subsection 4 "The Commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this office" (Emphasis supplied).

The intent of the legislature is that the Commission is still the administrative head of that part of the Manpower Department which consists of the Maine Employment Security Commission, and that the Commissioner of Manpower Affairs has only the authority which he would have as a member of the Commission.

In this connection it should be pointed out that section 1082, subsection 2, indicates that two commissioners shall constitute a quorum. Also, that Title 1, § 71, subsection 3, provides:

"Words giving authority to 3 or more persons authorize a majority to act, when the enactment does not otherwise determine."

There is no conflict between § 1082, subsections 1 and 4.

It should be noted that the Commissioner of Manpower Affairs is given duties relative to the overall department in § 1401 as follows:

"Budget. Prepare a budget for the department;

"Personnel. Transfer personnel within the department to insure the efficient utilization of department personnel subject to the Personnel Law;

"Purchase. Coordinate the purchase and use of all the department equipment; and

"Review. Review the function and operation of the department to insure that overlapping functions and operations are brought to the attention of the Governor and Legislature."

It must be said that he has these duties even as they relate to Maine Employment Security Commission. He prepares the budget for the whole department; he may transfer personnel within the department; he may coordinate the purchase and use of departmental equipment; and he may review and report to the Governor and Legislature the functions and operations of the department. See § 1082, subsection 1, concerning reporting to the Governor.

It is only in these areas that he has the full duty of administering the Employment Security Law.

QUESTION NO. 3:

The records of the office of the Secretary of State show that James C. Schoenthaler was appointed Commissioner of Maine Power Affairs on October 6, 1971 to serve at the pleasure of the Governor and Council. He qualified on October 11, 1971. This appointment was in accordance with P.L. 1971 Chapter 499, section 1.

The term of this office was terminated by P.L. 1971, Chapter 622, section 143, effective March 15, 1972.

May 2, 1973

P. L. 1971, Chapter 620 which permanently created the Department of Manpower Affairs headed by a commissioner, became effective July 1, 1972. On June 21, 1972 Governor Curtis advised James C. Schoenthaler that effective July 1, 1972 he was appointed temporary Deputy Commissioner designated as Acting Commissioner of the Department of Manpower Affairs. This appointment was for 60 days in accordance with 5 M.R.S.A., section 1. Mr. Schoenthaler could not succeed himself at the end of the 60-day period.

No person has been appointed by the Governor with the advice and consent of the Council, as Commissioner of the Department of Manpower Affairs. No person has been named as a temporary Deputy Commissioner since August 29, 60 days after the July 1, 1972 appointment. There is no Commissioner of the Department of Manpower Affairs.

It should be noted by P.L. 1971, Chapter 620, it provides:

"The Commissioner of the Department of Manpower Affairs shall also be chairman of the Employment Security Commission."

The reverse is not the case. The chairman of Maine Employment Security Commission is not the Commissioner of Manpower Affairs.

QUESTION NO. 4:

The answer to questions 1 and 2 seems to answer this question. Attached is a copy of a memo from George C. West, Deputy Attorney General, to James S. Erwin, Attorney General, dated April 27, 1970; a letter from Erwin to James George, Sr.; and an opinion given to James C. Schoenthaler dated May 29, 1970. Only to the extent of section 1401 supra have the statutes changed the conclusions in those two opinions.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H
Enclosures