

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 21, 1974

To James K. Keefe, Commissioner

Dept. Commerce & Industry

From Martin L. Wilk, Assistant

Dept. Attorney General

Subject DCI District Coordinators

This will respond to your memorandum dated May 21, 1974 as amended by your memorandum dated May 23, 1974 requesting our opinion with respect to salary increases for certain "District Coordinators". Although you set forth several separate questions in your memoranda, discussions with representatives of your Department, the Bureau of Finance and Administration, and the Department of Manpower Affairs discloses that the ultimate issue is whether salary savings may be used to pay a 5% cost-of-living increase to District Coordinators for the fiscal year ending June 30, 1974 where the salaries of the District Coordinators are presently derived wholly from Federal funds and where the District Coordinators are receiving the maximum amount permitted from Federal sources under the Federal Grant. For the reasons which follow, it is our opinion that salary savings may properly be used for that purpose. The pertinent provision dealing with salary savings reads as follows:

Chapter 100 - P. & S., 1973 -

Sec. 7. Personal Services savings and flexibility.

"Savings accruing within appropriations made for permanent positions may be used for nonrecurring personal services or retirement costs when recommended by the department head and the State Budget Officer, and approved by the Governor and Council."

The language quoted above expressly permits the use of salary savings for "nonrecurring personal services". Accordingly, the question becomes whether the salary increases under consideration pertain to nonrecurring personal services. In our view, for purposes of the instant inquiry, they do. The Emergency Employment Act of 1971, Public Law 92-54, 92nd Congress (85 Stat., 146 et. seq.) pursuant to which the District Coordinators have been funded was to expire June 30, 1974, Public Law 92-54, Section 6 (85 Stat., 148).

AN INFORMAL OPINION

Since the Federal program was, by its terms, to expire on June 30 of this year, it would appear proper to consider the positions funded thereunder as "nonrecurring personal services".

We are informed by Stephen Bennett of Manpower Affairs, that the Congress has recently (within the last week) extended the programs under the Emergency Employment Act for an additional nine months, until March 31, 1974. The fact that the program has a new finite termination date further supports our conclusions that the positions of District Coordinator (EEA funded) should not be considered as recurring services within the meaning of the pertinent appropriation act.

Still further support for this conclusion appears in Section 11 of Chapter 100, P. & S., 1973, as follows:

"Personnel employed by programs partially funded by federal funds shall be considered limited appointment employees, notwithstanding the figures in parentheses representing numbers of employees, should federal funds be withdrawn or reduced." (emphasis added)

If we may be of any further assistance, please let us know.

MLW/cmf

cc: Otto W. Siebert
Stephen Bennett

AN INFORMAL OPINION