

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 15, 1975

Leslie H. Stanley, Chairman
Public Utilities Commission
Augusta, Maine 04333

Dear Mr. Stanley:

This is a reply to the Public Utilities Commission's July 10, 1975, request for a written opinion concerning the employment by the Commission of Roberta M. Weil. The questions posed by the Commission are as follows:

"1. Because Roberta M. Weil has been hired for the position formerly entitled Examiner/Chief Accountant and because the salary for that position was set by the Governor and Council's Order of October 3, 1973 and no subsequent revised order has been approved, is the salary to which Roberta M. Weil legally entitled \$18,000 per year regardless of the action of the Governor and Council on July 9, 1975?

"2. If the answer to Question 1 is in the negative, what salary is Roberta M. Weil lawfully entitled to and by what legal process is that salary set?"

We answer the first question in the negative. In answer to the second question, the salary to which Roberta M. Weil is lawfully entitled is that which the Governor, with the advice and consent of the Executive Council, establishes pursuant to 2 M.R.S.A. § 6, sub-§ 6.

Your letter recites as facts that on June 23, 1975, Roberta M. Weil was appointed to the position of "Examiner/Director of

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Economics and Finance Division" by the Public Utilities Commission.* Her appointment was intended to fill the vacancy created by the retirement of Harold Townes who held the position of "Examiner and Chief Accountant of the Public Utilities Commission." When Mr. Townes retired, the position that he occupied was renamed: "Examiner/Director of Economics and Finance Division, Public Utilities Commission." Your letter advises us that a person filling the newly named office would perform all the functions formerly performed by Mr. Townes and in addition, preparation and presentation of sworn testimony before the Commission on matters such as cost of capital and other financial issues. The Commission set no salary for Mrs. Weil.

On October 3, 1973, the Governor and Executive Council, pursuant to 2 M.R.S.A. § 6, set Mr. Townes' salary as Examiner and Chief Accountant of the Public Utilities Commission at \$17,000, with an additional upward adjustment of \$1,000 after one year.

On July 9, 1975, an order was introduced to the Executive Council requesting that Roberta M. Weil's salary as Examiner/Director of Economics and Finance Division be established at an annual rate of \$18,000. The Executive Council approved the order but the Governor did not.

It is our opinion that the Governor, with the advice and consent of the Council, is authorized to establish the salary for Roberta M. Weil; and that it need not be the same paid her predecessor. We rest our opinion upon the language of the applicable statute as well as the Legislative Record.

The statute itself clearly authorizes the Governor and Executive Council to adjust the salaries of the State officials and employees enumerated in it, including the office of Examiner and Chief Accountant of the Public Utilities Commission.

"Notwithstanding any other provisions of law, the Governor, with the advice and consent of the Council, is authorized to adjust the salaries of the following State officials as indicated and, it being further provided that any such adjustment will not exceed \$1,000 per year until the maximum is reached:

" * * * .

* The provisions of 2 M.R.S.A. § 6, sub-§ 6 name the position in question as "Examiner and Chief Accountant of the Public Utilities Commission"; there is no statutory office entitled "Examiner/Director of Economics and Finance Division, Public Utilities Commission." Therefore, throughout this opinion, we consider the office in question to be the former, not the latter.

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"6. The salaries of the following State officials and employees to no more than \$18,000:

" * * *

"Examiner and Chief Accountant of the Public Utilities Commission." 2 M.R.S.A. § 6, sub-§ 6.
(Emphasis supplied.)

The provisions of 2 M.R.S.A. § 6 were initially enacted by the 103rd Legislature in Special Legislative Session. P. L. 1967, c. 542. (L.D. 1880, a redraft of L.D. 1840, House Paper 1336: "An Act Proposing a Salary Plan for Certain Unclassified State Officials.") The Record of the House contains remarks by the sponsor of the Bill to explain the reason for the legislation. (See pages 378-380 of the Legislative Record, January 24, 1968.) The purpose of the legislation was to allow the Governor and the Executive Council leeway in establishing the salaries for the enumerated positions. In fact, the sponsor of the Bill foresaw the possibility that one State official could be replaced by another for a lesser salary.

" * * * if a department head passed on, if he resigned, he after having had years of service would have probably reached into somewhat of a top bracket. In many instances he could be replaced by a man for a lesser salary. * * * ." Legislative Record, January 24, 1968, p. 379.

The provisions of 2 M.R.S.A. § 6 were to serve the purpose of creating flexibility in the Governor and Council in paying certain State officials and employees.

"Now what would this bill do? This bill is not essentially a pay raise bill and should not be interpreted as such. This bill follows along the lines of the Cresap, McCormick and Paget report where it seeks to set ceilings and give flexibility to the Governor and Council in the hiring and the payment of department heads. The fact that the ceiling is set at a certain sum does not mean that this department head would receive automatically this salary; this is far from the case.

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"Now we will go on a little further. We can only rely on the integrity of the Governor and Council. I have discussed this problem at length with the Chief Executive of this state and also with the members of the Council. I am utterly convinced there will be no abuse whatsoever of authority. Yet I believe that the Governor and the Council should be at least allowed a range in which to hire and which to pay department heads."
Legislative Record, January 24, 1968, p. 379.

The Commission's letter states Mrs. Weil's appointment was made pursuant to 35 M.R.S.A. § 299. While it is true the Commission fixes the salaries of examiners employed pursuant to 35 M.R.S.A. § 299, the position in question is governed by 2 M.R.S.A. § 6, sub-§ 6, and under the latter provision, the Commission does not set the salary.

The Commission's letter requesting an opinion notes that the Executive Council approved Mrs. Weil's salary at \$18,000, but the Governor did not. Should an impasse exist as to the amount of salary to be paid Mrs. Weil, no salary could legally be paid her because according to the provisions of 2 M.R.S.A. § 6, the Governor and Executive Council establish the salaries for those persons employed in the enumerated positions: " * * * the Governor, with the advice and consent of the Council, is authorized to adjust the salaries of * * * state officials as indicated * * * ." Until a Council Order is approved by the Governor and Council establishing a salary for Mrs. Weil, she cannot lawfully be paid. Nothing in 2 M.R.S.A. § 6 indicates that salaries once established for present employees carry over to new employees. As a matter of fact, there is statutory language stating that orders issued by the Governor and Executive Council establishing compensation for State officers and employees "fix their compensation," and so such orders may be considered personal in nature. (Emphasis supplied.)

On the basis of the foregoing, it is our opinion Roberta M. Weil, if employed as Examiner and Chief Accountant of the Public Utilities Commission, is entitled to that salary which the Governor, with the advice and consent of the Executive Council, establishes, provided such salary is not in excess of \$18,000. The Governor and Executive Council may establish

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a salary less than that which was paid to Mr. Townes. Until a salary is so established, Mrs. Weil cannot legally be paid under 2 M.R.S.A. § 6, sub-§ 6.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

JEB/ec

cc: Governor James B. Longley

Carl E. Cianchette, Chairman
Executive Council

Peter A. Bradford, Commissioner
Lincoln Smith, Commissioner