

MAINE STATE LEGISLATURE

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August 6, 1975

Honorable Charles A. Jacobs
Executive Councillor
State House
Augusta, Maine

Re: Examiner/Director of Economics and Finance Division -
Public Utilities Commission.

Dear Mr. Jacobs:

This will respond to your letter dated July 31, 1975, raising two further questions with respect to the employment by the Public Utilities Commission of Roberta M. Weil as follows:

"1. Can the Governor and Executive Council refuse to establish a salary pursuant to Title 2 M.R.S.A. Section 6 and thereby veto the hiring of Ms. Weil?

"2. Can the Governor and Executive Council as a condition precedent (sic) to establishing her salary, require Ms. Weil to commit herself to at least one year's service?"

For the reasons which follow, the answer to both questions is no.

At the outset it is important to note that with respect to the position in question, the power to appoint is distinct from the power to fix a salary. This is not a position subject to Executive Council confirmation. The appointive power has historically been exercised by the Public Utilities Commission, see Council Order No. 321 dated May 21, 1969, a copy of which is annexed hereto. Moreover, the Public Utilities Commission has express statutory authority to appoint examiners to serve at the Commission's pleasure pursuant to 35 M.R.S.A. § 299, which provides, in pertinent part:

"Said Commission shall have power to appoint, to serve during its pleasure, examiners. . . ."

On the other hand, the power to set the salary of the Examiner/Chief Accountant of the Public Utilities Commission is vested in the Governor, with the advice and consent of the Council, pursuant to 2 M.R.S.A. § 6, sub-§ 6.

"The Governor, with the advice and consent of the Council, is authorized to adjust the salaries of. . . Examiner and Chief Accountant of the Public Utilities Commission."

Since the power to appoint the Examiner/Chief Accountant rests with the Public Utilities Commission itself, and since the appointee holds office at the Public Utilities Commission's pleasure, it is our opinion that the Public Utilities Commission has the sole authority to impose conditions on employment, other than salary. There is nothing in the statutes or elsewhere which suggests that the power of the Governor to adjust salaries under 2 M.R.S.A. § 6(6) carries with it the power to impose conditions on the employment of a person who is neither appointed by nor serves under the Governor's supervision or control.

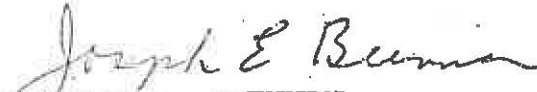
In our opinion addressed to Leslie H. Stanley dated July 15, 1975, on this subject, we indicated that 2 M.R.S.A. § 6(6) was intended to and does provide considerable flexibility to the Governor and Council in setting the salary for the position in question. The legislature assumed that the Governor and Council would act reasonably in exercising its power to fix salaries.

"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.

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We do not read the limited authorization to "adjust. . . salaries" as embracing the power to adjust a salary to zero, or as embodying the power to refuse to set any salary altogether. Such a reading would, practically speaking, provide the Governor and Council with an absolute veto over appointments duly made by the Public Utilities Commission. Had the Legislature intended to confer such pervasive authority in the Governor and Council, it would have said so expressly.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

JEB/ec