MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 7, 1976

Representative Richard A. Spencer
R.F.D. #1
Sebago Lake, Maine 04075

Dear Representative Spencer:

This responds to your request for an opinion regarding the effect of legislative adoption of the Hay Report on collective bargaining for State employees. Specifically, you ask: Is there a substantial legal question as to whether the State, if it chooses to do so, could refuse to bargain on the issues of grade and range changes and increased salary levels if the classification system of the Hay Report is adopted in appropriations legislation?

Prior Opinions:

This office has already addressed two related questions regarding impact of legislative adoption of the Hay Report in opinions of April 7 and April 9, 1976. Copies of those opinions are attached. The conclusions of those opinions were:

1. That legislative adoption of the Hay Report would not prohibit discussion of pay issues during collective bargaining negotiations, and

2. That any proposed adjustments of wage and salary schedules resulting from such negotiations would require legislative ratification.

Answers in Brief:

1. It would be difficult to interpret adoption of the Hay Report by itself to seriously restrict collective bargaining on general wage increases.

2. There is substantial legal question as to whether the state is required to bargain on grade and range changes and this question exists without regard to the Hay Report.

Discussion:

Grade and Range Changes:

Recognizing that 26 M.R.S.A. § 979-D-1-E-1 indicates matters appropriate for collective bargaining exclude those "prescribed or controlled by public law," the State could take a legally defensible position that it need not bargain on grade and range changes if these matters were dealt with in appropriations legislation incorporating the Hay Report. However, it should be assumed that the State will act in good faith in these matters.

It might be alleged that State refusal to bargain in this area constitutes a violation of 26 M.R.S.A. § 979-C-1-E which prohibits "refusing to bargain collectively with the bargaining agent of its employees as required by 26 M.R.S.A. § 979-D." However, a defense to the charge of refusal to bargain on grade and range changes could be legitimately asserted on the grounds that these matters were already subject to public law and thus outside the scope of required collective bargaining.

Specifically, the State might take the position that:

(a) Legislative enactment of the Hay Report adopted by reference its grade and range decisions subject only to the designated appeal procedures before the Temporary Compensation Review Board and under the personnel law. (C.F. L.D. 2342, Part D, Sec. 5) This construction could exclude collective bargaining as a means to achieve grade and range changes under the "public law" provision of § 979-D-1-E-1. Further, positions addressed by the Review Board are frozen for one year and thus clearly ouside the scope of bargaining.

(b) Regardless of the Hay report, the procedure for establishing the classification system and making grade and range changes is specified by law in 5 M.R.S.A. Chapters 51, 53 and 55, (the Personnel Law*) and that pursuant to the "public law" provision the methods of the Personnel Law are the exclusive method of achieving grade and range changes. In support of this provision is § 979-D-1-E-2 which specifically states an intent to maintain the effectiveness of the personnel laws.

Wage Changes:

We do not believe that a refusal to bargain on general wage increases would have much legal credibility. It might be alleged that

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* See also P.L. 1975, c. 686.

adoption of the Hay Report established, by "public law" the salaries for each position covered by the Hay Report, making those salaries non-negotiable in the bargaining process. Against this would be clear statements of law intending negotiation on wages including direction to:

> "confer and negotiate in good faith with respect to wages, hours . . . ."
> 26 M.R.S.A. § 979-D-1-E-1

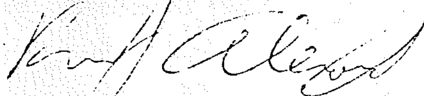
and indicationthat matters for collective bargaining include:

> "Wage and salary schedules"
> 26 M.R.S.A. § 979-D-1-E-1(a)

It will be particularly difficult to assert a refusal to bargain in a situation where across-the-board increases were the subject of the discussion. Further, we emphasize again that one should not lightly assume that the State might use excessive technicalities to try to avoid bargaining on an issue (wages) which has traditionally been the central subject of bargaining processes.

We would note further that similar interpretations could be encountered under current statutes without adoption of the Hay Report. The matter of the State's current obligation is addressed in greater detail in the letter of this date to Representative William J. Garsoe, a copy of which is attached hereto.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

DGA:mfe
Enclosures

cc: Senator Joseph Sewall
Speaker John L. Martin
Representative William J. Garsoe
S. Lanning Mosher
Representative Mary Najarian

April 7, 1976

Honorable Richard Davies
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Davies:

This responds to your oral request of yesterday for an opinion as to whether enactment of L.D. 2342, the appropriations legislation, which would implement the Hay Study, would make the matters in L.D. 2342 outside the scope of collective bargaining pursuant to 26 M.R.S.A. § 979-D-1-E(1). Such could occur if the matters in L.D. 2342 became matters "prescribed or controlled by public law."

It is the opinion of this office that there would be no obstruction of the obligation to bargain specified in § 979-D by enactment of L.D. 2342. Section 979-D-1-E contemplates, in subparagraph (3) that cost items will be included in the Governor's budget and submitted to the next session of the Legislature. Therefore, should L.D. 2342 be adopted, the Legislature could subsequently revise its provisions to be consistent with costs in any collective bargaining agreement, and such revision is clearly contemplated by § 979-D.

We would emphasize, however, that the Hay Study Plan, if adopted by L.D. 2342, would prevail until changed by the Legislature. Grade or range changes could not be adopted simply by negotiations. The matter could be addressed in collective bargaining but the sesult of the collective bargaining would have to be recommended to and approved by the Legislature as a cost item pursuant to subparagraph 3. We would also note that section 5 of Part D of L.D. 2342 establishes a temporary compensation review board which is to remain in effect for 90 days after the effective date of implementation of the pay plan. During this time section 5

5.

specifies that this temporary compensation review board has "exclusive jurisdiction" to hear appeals regarding the pay plan.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

DGA:mfe

cc: Honorable Mary Najarian
Lanning Mosher

6.

JOSEPH E. BRENNAN
ATTORNEY GENERAL

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 9, 1976

Honorable James Tierney
House of Representatives
State House
Augusta, Maine 04333

Dear Jim:

This responds to your request for an opinion on the question: "If the Hay Report, as proposed in L.D. 2342, is enacted, must all changes in job grades or ranges also be accomplished by statutory changes?" Our answer to this is yes. If L.D. 2342 is enacted, then provisions of collective bargaining agreements which effect grade or range changes for certain classes of State employees will have to be approved by legislative action.

The reasons for this result are discussed in the letter from this office of April 7, 1976, which addressed the relationship of Part D of L.D. 2342 to 26 M.R.S.A. § 979-D-1-E.

You have posed the additional question of whether the term "public law" in section 979-D-1-E could be construed to exclude a private and special law, such as an appropriations bill. If this construction were adopted, then no matters in L.D. 2342 would preclude collective bargaining or implementation of that bargaining pursuant to section 979-D-1-E.

While the law on this matter is not entirely clear, we do not believe that such a construction can be adopted. There is a distinction between regular statutes and appropriations bills. Thus, the Supreme Judicial Court in City of Bangor v. Inhabitants of Etna, 140 Me. 85 (1943), stated, though by way of dictum, "An appropriation bill is not a law in its ordinary sense. Such a bill pertains only to the administration functions of government." Such, however, does not appear a sufficient distinction for a determination that the term "public law" in section 979-D-1-E does not include private and special laws. Traditionally, private and special

laws were acts operating only on particular persons and private concerns. People v. Palmer, 35 N.Y.S. 222, 225; Allen v. Hirsch, 8 Or. 412, 415; People v. Wright, 70 Ill. 388, 398. The distinction in Maine, however, has become considerably blurred and matters of rather broad application have traditionally been included in appropriations legislation which are enacted as private and special laws. L.D. 2342 is typical of this tradition.

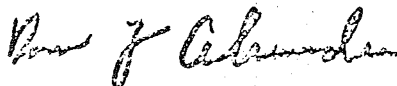
Further, such inclusion of matters of broad application is encouraged by the Maine Constitution, which, unlike some other states which prohibit special legislation, states in Article IV, Part Third, § 13,

> "The Legislature shall, from time to time, provide, as far as practicable, by general laws, for matters usually appertaining to private or special legislation."

Thus, by the Constitution there is no significant distinction between public laws and private and special laws. Nor is any such distinction provided in the Maine statutes or in the rules of the Maine Legislature. For this reason, we cannot construe the term "public law" to exclude private and special laws where the distinction between public laws and private and special laws has become so blurred.

You also pose the question, "If legislative approval of collective bargaining agreements relating to grade and range changes would be required by enactment of L.D. 2342, must this enactment be by public law or private and special law?" In light of the lack of clear distinction between the two types of laws in matters relating to the operation of state government, we believe this is not as much a matter of legal interpretation as it is a matter of legislative choice.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec