

MAINE STATE LEGISLATURE

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June 28, 1976

Honorable William J. Hennessey
Maine House of Representatives
R.F.D. #1
West Bath, Maine 04530

Honorable Harland C. Goodwin, Jr.
Maine House of Representatives
10 Parent Street
South Berwick, Maine 03908

Gentlemen:

You have asked whether the Governor, through the Director of the Department of Personnel, the Personnel Board or an ad hoc committee may impose a moratorium on hiring. The conditions upon which an answer to your question must be based are so diverse and complex as to make a flat yes or no declaration difficult.

The Governor has authority to make recommendations to the various appointing authorities in the Executive Branch of government with respect to effecting cost savings in expenditure of personal services money. Compliance with the Governor's recommendations in such matters is ordinarily at the discretion of the appointing authorities. Probably only in an extraordinary circumstance could the Governor enforce his recommendation. The Governor's ad hoc committee, i.e., the Position Evaluation Committee, also called the Moratorium Committee, is an example of the use of the foregoing informal authority of the Governor. The success of such a committee depends exclusively upon the voluntary cooperation of the various appointing authorities to implement the Governor's recommendation for a State moratorium on hiring (Art. V, Part 1, §§ 1, 10 and 12, Constitution of Maine).

Hon. William J. Hennessey
Hon. Harland C. Goodwin, Jr.
Page 2
June 28, 1976

In addition, where the Commissioner of Finance and Administration certifies to the Governor and Council that the State's anticipated income and other available funds will not be sufficient to meet its authorized expenditures, the Governor and Council may equitably curtail allotments temporarily so that the State's expenditures will not exceed its income (Chs. 78, 90 and 147, § 3, P. & S.L. of 1975). Insofar as such a curtailment would reduce the amount of money available to the various appointing authorities for personal services, a moratorium on hiring could be effected. Flexibility in spending power is also recognized in appropriations legislation by appropriating certain sums and providing that those sums "or as much thereof as shall severally be found necessary" may be expended (c.f. P. & S.L. 1975, c. 147, § 1).

For your further consideration of the authority of the Governor in this area, I have attached copies of my opinions given earlier this year to Governor Longley, Senator Speers and Representatives Jackson, Jalbert and Kelleher, respectively. I hope they will provide you with further insight in this complex and difficult area.

In consideration of the roles of the Personnel Board and the Director of the Department of Personnel in effecting a moratorium on personal services, please be advised that the role of those respective officers is ministerial only. Although the Personnel Board and the Director of the Department of Personnel are responsible for the administration of the State civil service law (Chapters 51-67 of Title 5 M.R.S.A.), they have no authority to exercise the power of appointment to positions in the classified or unclassified services. The power of appointment resides by statute with the respective appointing authorities (e.g., 20 M.R.S.A. § 102 authorizes the Commissioner of Educational and Cultural Services to appoint, subject to the personnel law, such employees as he deems necessary to carry out the duties of the Department). So long as he remains within the position count established for his Department by the Legislature via the current appropriations act (see Chs. 78 and 90, P. & S.L. of 1975) and makes appointment to vacant positions in accordance with the personnel law and rules, his power to appoint is complete.

Having clothed department heads with the power to appoint classified and unclassified employees, the Legislature established the Personnel Board and the Department of Personnel to oversee the manner and quality of appointment. The responsibility of the Personnel Board and the Director of the Department of Personnel is to assist the appointing authority by examining applicants


Hon. William J. Hennessey
Hon. Harland C. Goodwin, Jr.
Page 3
June 28, 1976

for employment and preparing registers of persons eligible for appointment. Once an appointing authority decides to fill a vacant position within its department, the Personnel Board and the Director must assist that authority to properly fill the position. No authority exists in the personnel law which would enable the Personnel Board and/or the Director to veto the decision of an appointing authority to fill a legitimate position in its department.

In conclusion, I believe the Governor possesses important constitutional and statutory duties with respect to the expenditure of money appropriated by the Legislature for personal services, but that he does not, except under extraordinary circumstances, possess the authority to impose a mandatory general moratorium on hiring. Further, such a moratorium may not be authorized or effected through an ad hoc committee or through or by the Personnel Board and/or the Director of the Department of Personnel. However, the fact that the Governor cannot on his own mandate impose a moratorium does not mean he cannot advise the departments of his views and seek their voluntary cooperation in reducing expenditures through an entity such as the Moratorium Committee. To date this appears to be what has occurred. A legal problem would only arise if a department chose to resist and the Moratorium Committee continued to seek imposition of its recommendations.

I hope the foregoing discussion has been of assistance to you.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

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Enclosures