STATE OF MAINE

Inter-Departmental Memorandum Date July 30, 1976

To Richard A. Dieffenbach, State Controller Dept. Accounts and Control
Richard W. Tripp, Acting Director Personnel
From Donald G. Alexander, Deputy Dept. Attorney General

Subject Application of P. & S.L. 1975, Chap. 147, Part D, § 4.

This responds to your respective memoranda to this office dated July 21 and July 26, 1976, posing certain questions regarding application of P. & S.L. 1975, Chapter 147, Part D., § 4. Your questions are responded to as follows:

1. Would classified and unclassified positions, for which the normal work week within an agency is less than 40 hours per week, be eligible to receive the appeal period allowance pursuant to Part D, Section 4, of P. & S.L. 1975, Chap. 147?

We answer in the affirmative. Section 4 refers to full-time employees. We believe that it was intended to apply to all employees who are construed by their agencies to be employed on a full-time basis, either as permanent or limited period employees. The fact that the normal work week for such employees may be less than 40 hours makes no difference in application of Part D, § 4 if they are construed full-time employees by the appropriate appointing authority.

2 and 3. Do the provisions of Part D, § 4, apply to State officials and employees whoses salaries are set pursuant to 2 M.R.S.A. § 6, certain of which salaries have been adjusted by § 4 of Part C of P. & S.L. 1975, c. 147, or which salaries are otherwise established by statute?

If the appeal period allowance does, in fact, apply to State officials and employees whose salaries are set by 2 M.R.S.A. § 6, or other statutory provisions, is the eligibility of such officials and employees limited in the same manner as indicated in your July 8, 1976, opinion regarding the eligibility of Assistant District Attorneys to receive said allowance if such receipt does not result in total compensation exceeding the statutory maximum?

Briefly, the answer to these questions is that the provisions of Part D, § 4 do apply to State officials whose salaries are set pursuant to 2 M.R.S.A. § 6 where those State officials are not paid at maximum authorized salary. It is clear that all employees covered by 2 M.R.S.A. § 6 are unclassified employees pursuant to 5 M.R.S.A. § 711. As all unclassified employees are eligible for the Part D, § 4 allowance, the employees covered by 2 M.R.S.A. § 6 would be eligible for that allowance unless otherwise barred by maximum salary limits. The provisions of 2 M.R.S.A. § 6 indicate that

the State officials covered by that section are to be paid salaries "not more than" the certain specified figures. However, some of these officials may be receiving salaries less than the specified figures, they would be eligible for the allowance provided by Part D, § 4 in the same manner as Assistant District Attorneys as are addressed in our memorandum of July 8, 1976. However, for officials covered by the provisions of 2 M.R.S.A. § 6 who are paid at the maximum specified salary, the allowance provided by Part D, § 4 cannot apply to increase their salaries over the specified amount. Only the provisions of Part D, § 7 apply to such employees. Additionally, we would note that the provisions of Part D, § 4 do not apply to those employees whose salaries are specified by 2 M.R.S.A. § 7. This is because the salaries in 2 M.R.S.A. § 7 are set in absolute terms at specified amounts, rather than allowing flexibility up to a certain amount.

4. Are employees of the Judicial Department and/or Administrative Court covered by Chapter 147, Part D, § 4, P. & S. L. 1975, and entitled to the $40 appeal period allowance?

Employees of the Judicial Department and the Administrative Court (but not judges) are entitled to the Part D, § 4 allowance. Judges' salaries are set by law at a specified figure. Thus, judges are not eligible for the Part D, § 4 allowance. However, employees of the Judicial Department are specifically made unclassified employees by the provisions of 5 M.R.S.A. § 711-4. Thus, unless some other provision of statute supersedes, Judicial Department employees are eligible for the allowance as unclassified employees. In this analysis, it must be noted that the Judicial Department has specific authority to establish its own separate personnel classification system. 4 M.R.S.A. § 23. Thus it would not be covered by the classification system adopted in Part D. However, the employees of the Judicial Department are still eligible for the allowance as it is not limited to those whose jobs are subject to the classification system imposed by the law. Section 4 is not restrictive in its language, and the initial heading of § 4 "Appeal Period Allowance" has no application in determining the meaning of the section. Further, we recognize that by the provisions of 4 M.R.S.A. § 551, compensation for Judicial Department employees is to be determined by the Chief Justice. However, this does not imply that the Legislature cannot, as it has done in this case, provide a certain limited form of increased compensation, in this case the appeal period allowance.

5. Are the county court employees now being transferred to State jurisdiction also covered by the same section, and if so, are there any restrictions/limitations to that coverage?

Former county employees who would otherwise be eligible for the Part D, § 4 allowance but for the fact they were county employees rather than State employees during 1975 are eligible to receive the Part D, § 4 allowance. In addressing eligibility, Part D, § 4 indicates that it shall apply to those persons who "were employed in calendar year 1975 and still employed during the month for which each such payment is made." The implication of this is that the employees should be employed in the same job or in the same service. The former county employees now employed as State employees of the Judicial Department are in the same jobs and the same employment system as previously. They have become State employees as a result of the court reorganization laws. The policy purposes which the 1975 limitation sought to serve would appear equally served by making these county employees eligible. It must be noted, however, that this rationale only applies to those employees who were not State employees in 1975, but who became State employees as a result of change in statute without the employees themselves changing jobs. This rationale would not apply to a person who was a county employee and changed jobs to become a State employee without automatically becoming a State employee as a result of the operation of a statute.

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