

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date November 4, 1976

To Richard W. Tripp, Dep. Comm'r. Dept. Personnel  
From Donald G. Alexander, Deputy Dept. Attorney General  
Subject Legal Authority to Oppose Decisions Relating to Range Changes on an Operating Agency of State Government

This responds to your memorandum of October 15, 1976.

FACTS:

The facts as stated in your memo are as follows:

"BACKGROUND: On August 27, 1973, the Department of Personnel received a request for a Range Change in the classification of Director, Division of Program Services, a classification utilized within the Department of Education and Cultural Services. The request was signed by the Director of the Division of Vocational Education and counter-signed by the Personnel Officer for the Department. The request specifically was to change the range from 24 to 26. The request was held by the Department of Personnel due to then applicable Wage and Price Stabilization Guidelines which prohibited the granting of such range changes.

"On June 13, 1974, after the Cost-of-Living Council restrictions were lifted, the request was presented to the Personnel Board and at a duly authorized meeting on that date, it was approved. On June 17, 1974, a notification of this action was sent to the Commissioner of the Department of Education and Cultural Services.

"On August 16, 1974, the Commissioner of the Department of Education and Cultural Services issued a written communication to the incumbent of the position indicating his disagreement with the requested range change and the decision of the Personnel Board. (In reconstructing the history, it appears that the Commissioner had not been previously aware of the request that was submitted to the Personnel Board and the notification to him on June 17 was the first indication that such action had been taken.)

"On August 16 memorandum from the Commissioner of Education and Cultural Services seems to clearly indicate his reasons for disagreeing with the action taken by the Board. Based upon this decision by the Commissioner and apparent discussions with the incumbent, no action was initiated within the Department of Education and Cultural Services to implement the change approved by the Board. The Range of the subject position remained unchanged; and on August 9, 1976, the incumbent was granted his first longevity increase to Step X of the Pay Plan at the original range of 24."

QUESTION:

May the Department of Personnel adopt and then enforce range changes that do not have the approval of the employee's appointing authority?

ANSWER:

Range changes adopted by the Department of Personnel according to proper procedures take effect regardless of whether such changes have the approval of the appointing authority.

DISCUSSION:

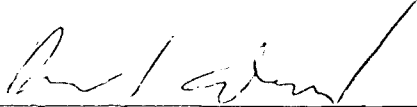
The Department of Personnel has general authority over the classified service. This authority includes the power to publish rules and regulations relating to establishment and change of salary classifications, 5 M.R.S.A. § 631; the power to adopt a classified plan, 5 M.R.S.A. § 633; and the power to develop an employee compensation plan, 5 M.R.S.A. § 634. At no point is the statutory authority qualified by requiring approval of department heads for decisions such as range changes. In fact, requiring such approval would be inconsistent with the purposes of the Personnel Law which contemplates that employees who perform similar tasks in several departments may be placed in the same grade and range categories.

Pursuant to the authority stated in 5 M.R.S.A. § 631, the Department of Personnel has published regulations relating to grade and range changes. Specifically, sections 4 and 5 of the Personnel Rules provide, in essence, that the Department of Personnel on motion of the appointing authority or an employee may initiate reviews of grade and range levels and adopt changes as appropriate. The regulations relating to grade and range changes do not require approval of the appointing authority or department head for such changes.

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Here it should be noted that these actions are distinguished from salary increases as provided for in Rule 5 which do require approval of the appointing authority. Therefore, range changes once approved by the Department of Personnel according to those procedures have full force and effect regardless of disagreement which may be expressed by appointing authorities.

It should also be noted that, as this question relates to a matter which arose prior to the effective date of P. & S.L. 1975, c. 147, Part D, the temporary effect of that law on the general authority of the Department of Personnel to adopt classification and compensation plans is not addressed by this opinion.

  
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DONALD G. ALEXANDER  
Deputy Attorney General

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