

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 26, 1977

To All Department Heads

Dept. Attorney General

From Joseph E. Brennan

Dept. Attorney General

Subject Liability of Supervisors for Performance appraisals in Merit Review Program

This office has received several inquiries regarding potential personal liability of supervisors in preparing performance appraisals under the 60/40 merit review program. Following is our opinion on the matter:

FACTS:

In 1976, the Legislature enacted a provision requiring merit ratings on all state employees recommended for a salary increase. (P. & S. Law 1975, Chap. 147 § 9). Procedures adopted by the Department of Personnel to implement the merit rating system require that employees in a supervisory category complete performance appraisals on other state employees through a rating and reviewing procedure. (Personnel Bulletin 10.2)

QUESTION:

Are supervisors who are required to complete performance appraisals on employees through the rating and reviewing procedure as established by the Department of Personnel subject to any personal civil liability for their actions pursuant to this procedure?

ANSWER:

No.

REASONS:

State employees employed in a supervisory capacity are required to complete performance appraisals on state employees as a part of their duties. In completing these performance appraisals, supervisory personnel are required to exercise their discretion in evaluating the work performance of other employees. It is clear that the completion of performance appraisals by supervisory personnel are acts done within the scope of their employment.

Under the traditional common law doctrine of sovereign immunity, governmental entities are immune from liability for their actions. However, in Davies v. City of Bath, 364 A.2d 1269 (Me. 1976), the Maine Supreme Judicial Court held that the traditional sovereign immunity doctrine, as followed by the State of Maine, was no longer valid.

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The Legislature responded to the action of the Maine court by enacting the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.; P.L. 1977, chap. 2). The Act provides in Section 8111 (1)(C), that governmental employees shall be personally immune from civil liability when performing or failing to exercise or perform a discretionary function or duty, whether or not the discretion is abused. It is clear that the requirement that supervisory personnel complete performance appraisals constitutes the performance of a discretionary function or duty within the meaning of Section 8111 (1)(C) of the Maine Tort Claims Act. Therefore, employees required to complete performance appraisals on employees are personally immune from civil liability for their actions in completing performance appraisals.

The provision of the Maine Tort Claims Act providing for personal immunity from civil liability for state employees engaged in performing a discretionary function or duty became effective on February 1, 1977.

JEB:PMCD:we


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