

# MAINE STATE LEGISLATURE

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STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

June 20, 1977

Honorable Robert S. Howe  
Maine House of Representatives  
State House  
Augusta, Maine

Re: Authority of Commissioner of Education Relating to Salary  
Levels of Unclassified Department Employees at Vocational-  
Technical Institutes

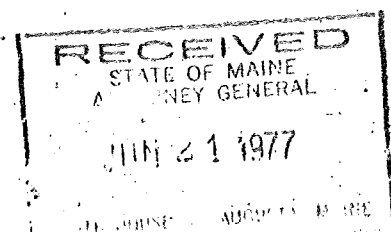
Dear Representative Howe:

Your letter of May 5, 1977, was referred to me for attention.

In researching the answers to the questions which you raised I conferred with representatives of the Executive Branch. I was advised by Mr. Lanning Mosher and Mr. Todd Smith that neither the persons who prepared the Hay Study nor the persons who sat on the Compensation Review Board were assigning the Vocational-Technical Institutes' instructors to a particular pay range. Rather, in both instances, they were assigning a point range to these instructors so that they would be compensated for their work on the same basis as any other person in state government who is within the same point range.

Both Mr. Mosher and Mr. Smith advised me that there was no conscious decision to limit the Vocational-Technical Institute instructors to 42/52 of their assigned pay range. Rather, it was their understanding that the instructors were to be treated the same as any other state employee. In particular, each state employee is to be paid at his or her specific salary level per each week actually worked.

Attached to an October 13, 1976, memorandum from Richard A. Dieffenbach, State Controller, to Payroll Clerks, was a set of instructions "to determine pay range and step (unclassified only)." The instructions specifically referred to vocational trade instructors. In addition, it set forth that teachers working a 42 week year would be placed on an assigned Hay pay range at a fractionalized level of



42/52 of that range. This appears to be the only executive direction on the issue of fractionalizing the instructors' pay range.

You have asked for the opinion of this office on three separate points. Two of your questions inquire as to whether the Temporary Compensation Review Board has the authority to reassess its assignment of the Vocational-Technical Institute instructors to pay range 23.

The Temporary Compensation Review Board was established by P. & S. L. 1975, c. 147, Part D, § 6 to review appeals from pay grade allocations. The section includes the provision that, "Any decision of the board shall be final and binding and shall not be subject to reconsideration for a period of one year." Since the board is temporary in nature, as its title implies, and it was directed to decide its appeals by November 1, 1976, or as soon as possible thereafter, it is my opinion that it would be inappropriate to ask the board to reassess its assignment of Vocational-Technical Institute instructors to Pay Range 23. The correct procedure would be to direct such request to the Commissioner of Personnel and the State Budget Officer once the one year waiting period has lapsed.

Your remaining question is whether the Commissioner of Educational and Cultural Services or any other official or agency of the Executive Branch has the authority to set the VTI instructors' salaries at 52/52 of their step and range.

It is my opinion that the only state officials who have the authority to place the Vocational-Technical Institute instructors at their proper salary level are the "Personnel Director" (the Commissioner of the Department of Personnel) and the State Budget Officer as set forth in Part D, section 3. They have the specific responsibility between them "for ensuring that unclassified employees are assigned to a proper pay grade according to the same policy and procedure applicable to classified employees within authorized funds." It is my opinion that these officials have the authority to determine whether the instructors' salaries should be set at 52/52 of their grade and range. Their determination would have to be consistent with the state pay policy set forth under section 7, Private and Special Laws of 1975, c. 147, which requires that the state "provide equal pay for equal work."

It is my understanding that the 42/52 fractionalization of the instructors' pay grade was the result of efforts by the Commissioner of the Department of Personnel and the State Budget Officer to ensure that the instructors were assigned "to a proper pay grade according to the same policy and procedure applicable to

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to classified employees within authorized funds."

If I can be of further assistance to you in this matter,  
please contact me.

Respectfully yours,

Waldemar G. Buschmann  
Assistant Attorney General

WGB:va