

# MAINE STATE LEGISLATURE

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State Employees, Reclassification or reallocation  
Personnel " " "

Cosmetology Executive Secretary

STATE OF MAINE

32 M.R.S.A. § 1601

Inter-Departmental Memorandum Date June 27, 1977

To Fran Davis and Leone  
Buxton, Members

Dept. State Board of Cosmetology

From Kay R. H. Evans, Assistant

Dept. Attorney General

Subject Position of Executive Secretary to the Board of Cosmetology

On June 6, 1977, you requested an opinion on two questions regarding the position of Executive Secretary to the Board of Cosmetology. Your questions and our responses are as follows:

QUESTION #1:

Under § 1601 of the Cosmetology Law, does the Personnel Department have the right to reclassify the Executive Secretary to a Clerk IV?

It is not possible to provide a definitive answer to your first question on the basis of the information supplied. Your question appears to raise the issue of "reallocation" of position, rather than "reclassification." Reclassification, or more exactly, amendment of the classification plan (Personnel Rule 4.2) involves creation of a new class. Allocation (Personnel Rule 4.3) is the process by which a position is placed in a certain class, and reallocation is the process by which a position is changed from one class to another. Thus understood, your question raises an issue of authority to reallocate a position.

Under certain circumstances, the Commissioner of Personnel may change the allocation of a position to a class; that is, he may reallocate a given position. Under Personnel Rule 4.3, a vacant position is to be allocated by the Commissioner when it is to be filled. The same Rule also provides that an occupied position is not to be reallocated except in accordance with Personnel Rule 4.4. Rule 4.4. provides, essentially, that an occupied position may be reallocated when it appears to have been or has become improperly allocated, because of a change of duties, agency structure, "or for some other reason." The Rule appears to be an enlargement or explication of the definition of "reallocation" in Rule 1.3(20).

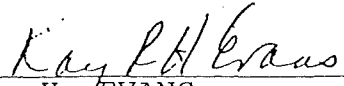
As to your specific question whether the position of executive secretary to the Board of Cosmetology may be reallocated to the Clerk IV class, the provision of § 1601 of Title 32 M.R.S.A. that "(t)he board shall employ. . . an executive secretary" probably would not of itself prevent

reallocation of the position, despite the fact that there presently exists a specific class of "Executive Secretary, Board of Cosmetology," the job description for which closely tracks the language of § 1601 defining the responsibilities of the Board's executive secretary. The class and job description were undoubtedly developed after the statute was written, and their obvious derivation from the statutory language cannot have the effect of freezing the meaning of the language. "Executive secretary" in statutory provisions such as § 1601 generally connotes an administrative officer responsible for carrying out duties specified by a given statute and/or by a board or other body to whom the officer is responsible. If the duties of the executive secretary of the Board of Cosmetology fall within the job description of and could be performed by a Clerk IV, there would appear to be nothing to prevent the Commissioner of Personnel from reallocating the position to that class, so long as he had "some reason" for doing so.

QUESTION #2:

Can a Board member, presently serving, take the test for Clerk IV and then resign if hired for the position?

Nothing in the Personnel Law or Rules, or in the Cosmetology Law, appears to prevent a Board member from taking the test for any classified position, even one within the sphere over which he or she exercises responsibility and authority as a Board member. However, if the Board of Cosmetology itself conducts the process by which an individual is chosen from among qualifying applicants to fill the position in question, a Board member-applicant for the position would have to disqualify him or herself from participation in that process, on account of the clear conflict of interest. If the Board member-applicant were chosen to fill the position, he or she would of course have to resign from the Board.

  
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KAY R. H. EVANS  
Assistant Attorney General

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