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State Employees' Compensation & Fringe Benefits of Unclassified Employees
State Employees' Vacation & Sick Leave
5 M.R.S.A. 16

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September 14, 1977

To: T. T. Trott, Jr., Executive Director
Maine Criminal Justice Planning & Assistance Agency

From: Donald G. Alexander, Deputy Attorney General

Re: Questions regarding Authority to Set Salary of
Unclassified Employees

This responds to your request for advice regarding the authority of the Board of the Maine Criminal Justice Planning & Assistance Agency to set the compensation, including pay, vacation and sick leave, of the Executive Director.

The Executive Director is made an unclassified employee subject to appointment and direction of the Board by 5 M.R.S.A. § 3353.

Generally, appointing authorities of unclassified employees, such as the Executive Director, have had wide discretion in setting compensation. That discretion was reduced by operation of P. & S.L. 1975, c. 147, Part D, which became effective November 1, 1976. Pursuant to that provisions, the salary of the Executive Director, as it is not subject to gubernatorial review and approval, is subject to the State pay plan. However, it is my understanding that the period of your concern regarding establishment of compensation in this area runs from May, 1976, to mid-November, 1976. Accordingly, the provisions of Part D would not yet have been generally applicable, except for a brief period in November.

The salary setting discretion which existed prior to November 1, 1976, is indicated by our opinion to Marion Klappmeier dated September 21, 1976, a copy of which is attached. The vacation time and sick leave of unclassified employees has also, traditionally, been subject to the

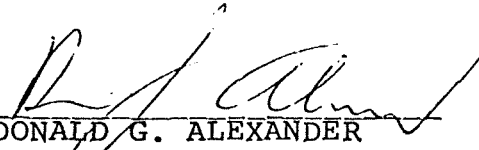
direction of the appointing authority, and the appointing authority has had considerable latitude. That changed somewhat on June 14, 1976, when 5 M.R.S.A. § 16 took effect. 5 M.R.S.A. § 16 sets minimum vacation and sick leave levels for unclassified employees, subject to increase at the discretion of the appointing authority. Section 16 is generally discussed in the opinion of this office, dated July 5, 1977, to Robert J. Stolt, Commissioner of Personnel, a copy of which is attached hereto.

Thus, to respond to your questions, we would advise that:

1. Prior to November 1, 1976, the Board of Directors of the Maine Criminal Justice Planning & Assistance Agency had very wide discretion in setting the salary level and work requirements to earn that salary for the Executive Director. After November 1, 1976, the salary of the Executive Director became subject to the provisions of the State pay plan.

2. Prior to June 14, 1976, the Board had broad discretion in setting policies for vacation and sick leave. After June 14, 1976, the Board was required to grant certain minimum levels of vacation and sick leave and keep records of vacation and sick leave. However, the Board was free to adopt more liberal requirements than those specified in 5 M.R.S.A. § 16.

In this connection, the source of funding of the position makes no difference. Our advice would be the same if the position were funded entirely by State revenues rather than by Federal funds.


DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

Enclosures

CC: Richard Cohen
Robert Stolt
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