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State Employees: Unclassified Positions
Unclassified Positions: VTI's
5 M.R.S.A. 711

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October 26, 1977

To: Robert J. Stolt, Commissioner, Department of Personnel
From: Kay R. H. Evans, Assistant Attorney General
Subject: Unclassified Service Positions at the Vocational-Technical
Institutes

Your memo of September 7, 1977, requests an interpretation of 5 M.R.S.A. § 711(10), with respect to the question whether certain administrative staff positions at the State vocational-technical institutes are placed in the unclassified service by operation of the language which includes therein ". . . principals of the school systems in State vocational schools" Your memo, background information which you have supplied and discussions with your staff indicate that this specific question has arisen in the course of an investigation of the unclassified service which the Department of Personnel has undertaken with the intention of transferring a number^{1/} of unclassified positions to the classified service.

With respect to your specific question, we conclude that it is not possible to discover the legislative intent with respect to these positions. Sections 678 and 711 of Title 5 appear to indicate with relative clarity the parameters of the classified and unclassified services. However, as we have suggested in previous opinions,^{2/} absent some independent indication in legislative history, it has become impossible to reconcile the statutory language of §§ 678 and

^{1/} It appears from the background material that unclassified positions being considered for transfer are those whose present inclusion in the unclassified service (a) has not been stipulated by "legislative or other authority" or, (b) has been based on "inappropriate authorization," that is, on statutory or other authority not properly applied to the position in question.

^{2/} See Opinion of the Attorney General to Otto W. Seibert, July 15, 1977.

711 with the assortment of actual legislative practices in creating positions. These practices assign positions to one service or the other with no, insufficient, ambiguous or unnecessary reference to §§ 678 or 711.

Further, while the language of § 711(10) itself may have been clear when enacted^{3/}, the passage of time has added ambiguity which renders the portion under consideration obsolete. While there are now two systems of State vocational schools,^{4/} there are no "school systems in State vocational schools." There are no "principals," so denominated, in either type of vocational school, though of course there are chief administrative officers.^{5/} These chief administrative officers in the vocational-technical institutes head individual institutes, not "school systems in State vocational schools." Further, even if "principal" were read as "chief administrative officer," and

3/ P.L. 1963, c. 140. The preamble to Chapter 140 notes that since there is no school in the summer at the State vocational schools, the teachers therein should be in the same category as teachers at the teachers colleges. That is the extent of the legislative history of this Act. There is no legislative history whatsoever on the bill which added the "teachers in teachers colleges" language to § 711(10). R.S. 1949, § 106. We note that the preamble to Chapter 140, of no help in any event, does not even mention principals.

4/ The two systems are the local or regional schools or centers which operate at the secondary level and the six vocational-technical institutes which operate at the post-secondary level. Since your inquiry is addressed to positions in the vocational-technical institutes, and since the local or regional facilities are staffed at those levels, we do not consider the application of § 711(10) to principals in the local or regional facilities. However, it is interesting to note, as a mark of the problems of § 711(10), that in terms it applies more easily to the local or regional facilities, where, for reasons external to the statute, it is clear that it does not apply.

5/ The chief administrative officers at the vocational-technical institutes are titled directors.

the single institute vs. the school system problem did not exist, the inferential leap to all of the administrative positions now in question does not seem possible without clearer indication that the Legislature intended that the leap be made.

However, we do not conclude that the problems of § 711(10) indicates that these positions are to be in the classified service. We cannot simply ignore the fact which prompted your inquiry: the positions in question have always been treated as unclassified by the Department of Educational and Cultural Services, which cites^{6/} §711(10) as its source for such treatment. The Legislature, while it has dealt frequently with issues of vocational education, has never indicated disagreement with that treatment. It has in fact passed legislation which could be viewed as assuming the unclassified status of the positions in question.

In the same opinion^{7/} in which we suggested that §§ 678 and 711 could no longer be viewed as establishing the limits of the classified and unclassified services, we also suggested that legislative clarification be sought. That remains our view of the proper approach to making sense of the situation in question, with respect to these specific positions and with respect to the classified and unclassified services in general. The Legislature created a basic, simple plan in §§ 678 and 711. It subsequently enacted variations on that plan, obscuring if not eradicating it. We think it is the Legislature's function to reorder the law in this area. Moreover, we think that only the Legislature has authority to do so, since adequate clarification and restatement necessarily involve both the classified and unclassified services. The Commissioner of Personnel may have the authority to substantially restructure the classified service, but he does not have the same authority over the unclassified service. While his authority unquestionably extends to § 711, it does so for very limited purposes,^{8/} largely involved with information gathering and record keeping. Clearly, he may investigate "concerning the

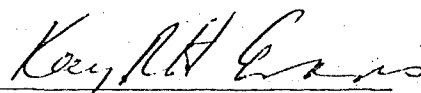
^{6/} Memo of September 6, 1977, from D. Knight to Robert Stolt.

^{7/} See footnote 2, supra.

^{8/} Indeed, the purpose of § 711 is to set aside a portion of State service which is, except for narrow and specific purposes, outside the reach of the civil service system over which the Commissioner and the Department of Personnel exert considerable control. Undoubtedly, recognition of the basic political nature of government employment is thereby codified; the administrative bureaucracy is denied total entrenchment; persons of uncategorizable talent can be utilized in government service; and, of course, some shreds of patronage are permitted to remain.

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enforcement and effect" of § 711, 5 M.R.S.A. § 631(2), but the power to investigate does not carry with it the power to institute changes. While the proposed changes may be regarded as "enforce(ment) of the observance of" §§ 678 and 711, 5 M.R.S.A. § 631(3), it is our opinion that in this instance these two sections do not represent the total available legislative expression on the subject and cannot be read alone to determine standards for administrative action to "enforce" their observance. There exist so many contradictory legislative enactments and practices that the requisite legislative guidance for administrative action is effectively nil. Accordingly, it is our opinion that the Commissioner of Personnel has no authority to accomplish the proposed transfer of unclassified positions to the classified service. The only appropriate source of such clarification and change is the Legislature.



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