

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333  
February 21, 1978

Honorable Donald F. Collins  
Senate Chambers  
State House  
Augusta, Maine 04333

Honorable Peter J. Curran  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Senator Collins and Representative Curran:

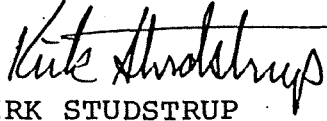
I am writing to bring to your attention a possible problem which may exist with regard to L.D. 2111, "An Act to Establish and Apply a Policy on the Classification of Major Policy-Influencing Positions Below the Head of State Department and Agencies." Specifically, we wish to bring to your attention the possible effect of section 5 of the L.D. which would amend 5 M.R.S.A. § 678, first paragraph by adding the sentence "This paragraph shall not apply to an employee appointed to a major policy-influencing position listed in section 711, subsection 2." The immediate effect of this amendment would be to exclude from the grievance and appeals procedure to the State Employees Appeals Board those state officers and employees listed in 5 M.R.S.A. § 711, sub-§ 2.

The possible problem we see is that by specifying that officers and employees in the major policy-influencing positions listed in § 711, sub-§ 2 are excluded from the grievance and appeals procedures, it is at least implied that all other unclassified state employees could utilize these procedures and their grievances would be within the jurisdiction of the State Employees Appeals Board. There are some members of the unclassified service, as defined in § 711, sub-§ 1 who do not hold "major policy-influencing positions" as defined in sub-§ 2, but who it may be appropriate to exclude from the Appeals Board jurisdiction. For example, the Supreme Judicial Court has ruled in District Court for District IX v. Williams, 268 A.2d 812 (Me., 1970), that the Appeals Board has no jurisdiction over unclassified employees of the Judicial Branch. (See: § 711, sub-§ 1, paragraph D). It may well be that including officers and employees of the Legislature (§ 711, sub-§ 1, paragraph E) within the Board's jurisdiction would have the same constitutional infirmity. Further, there are constitutional officers designated in § 711, sub-§ 1 as members of the

unclassified service who are not designated as holding "major policy-influencing positions" in sub-§ 2. In light of the proposed amendment to 5 M.R.S.A. § 678, it could be argued that even these constitutional officers could use the grievance and appeals procedures of 5 M.R.S.A. §§ 751 - 753, while their immediate subordinates could not do so because they are listed in § 711, sub-§ 2. The foregoing examples are listed strictly as examples and there may be other positions in the unclassified service which could create similar problems.

We are bringing the foregoing information to the Committee's attention solely to alert the Committee of a possible problem. We will be happy to discuss the matter further if you so desire.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Kirk Studstrup".

S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe