

# MAINE STATE LEGISLATURE

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DISTRICT ATTORNEY  
PROSECUTORIAL DISTRICT  
NUMBER TWO

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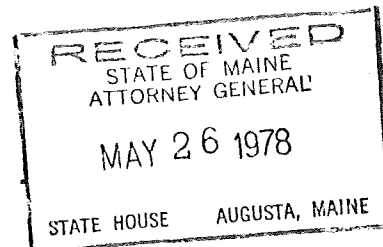
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May 24, 1978

Ms. Peggy-Lee Ragan  
Chairperson  
Cumberland County Commissioners  
Cumberland County Courthouse  
142 Federal Street  
Portland, Maine 04101



Dear Ms. Ragan:

This letter is in response to a request by Sheriff Charles Sharpe for advice concerning whether he may raise the salary of certain employees without approval of the County Commissioners. The same or similar questions are being raised by other county officials such as the Register of Probate and the Register of Deeds. Therefore, with both your and Sheriff Sharpe's permission, we are addressing this letter to you.

As to many of the county employees whose salaries are at issue, the Commissioners have the statutory duty to either set or approve the salaries. In the case of deputy sheriffs, the Commissioners must set the level of compensation. 30 M.R.S.A. §958. The Commissioners also "fix" the compensation for the "jailer, master or keeper and all subordinate assistants and employees." 34 M.R.S.A. §901.

The Commissioners must approve the salary set by the Register of Probate and the Register of Deeds for their respective deputies. 18 M.R.S.A. §256 (Probate); 33 M.R.S.A. §605 (Deeds).

The Commissioners must also set the salary of "clerks" who work in various county offices. 30 M.R.S.A. §801 states in part: "In all county offices there shall be allowed for clerk hire the amount authorized by the county commissioners of the various counties. The salary of all clerks shall be determined by the county commissioners after receiving a recommendation from the county officer under whom such clerk is employed."

The section further requires that "The county commissioners may establish reasonable office hours for offices in the county building and provide for a county pay scale for clerical help, with paid vacations of two weeks per year after at least a year's service and with paid vacations of three weeks per year after at least ten years' service." (Emphasis added).

The meaning of "clerk hire" and "clerical help" is fairly well defined and follows common understanding. It includes persons employed to do stenographic and typewriting work, file clerks, supply clerks and bookkeepers. It does not include persons doing "manual labor." It does not include work involving policy or other important decision making or executive talent. (Citations are available if needed; much of the law defining "Clerical help" comes from workmen's compensation cases in which coverage was determined in part by whether or not a person was within such a job category).

To the extent, therefore, that a county employee falls within this category of "clerk hire" or "clerical help", the employee's salary must be set by the Commissioners. Perhaps more important is the requirement to set a "pay scale." The minutes of the meeting at which salaries were at issue (May 16, 1978) indicate that the Commissioners "feel they should have an organized pay scale system." In fact, in this case of clerical employees, such a system is mandatory.

The law is also clear that the Commissioners may rescind a previously granted pay raise. (Citations available if needed). Of course, during the period any pay raises were in effect, the employees are entitled to the higher compensation.

One other problem should be discussed, even though the above cited statutes probably dispose of the questions concerning the power of the Commissioners to set the pay of those employees whose pay is currently in dispute. The minutes of the May 16, 1978 meeting state that the Commissioners "had second thoughts about [the pay increases] and refused to sign payroll with increases." Later a vote was taken to rescind the pay raises previously granted. A search of the statutes, particularly those dealing with the county commissioners (30 M.R.S.A. §§ 1-426) and the county treasurer (30 M.R.S.A. §§601-756), reveals no requirement that the commissioners "sign" or otherwise approve the weekly payroll or any other particular bill to the county.

In fact, 30 M.R.S.A. §704 states only that "The Treasurer of any county shall not pay out any funds for an account or claim against the county unless such account or claim is itemized, and such account or claim is declared to be a public record."

The Treasurer does have a duty to account to the commissioners, and the commissioners have considerable power over the expenditures of the county. See 30 M.R.S.A. Sections 251, 751-754. Section 251, for example, requires the commissioners to "examine, allow and settle accounts of the receipts and expenditures of the moneys of the county." And Section 751 states that the treasurer "shall apply all moneys received by him for the use of the county toward defraying its expenses, as the county commissioners by their written order direct."

None of these provisions give the power to the commissioners to prevent an otherwise legitimate and authorized expenditure by refusing to sign a payroll or other bill.

Even assuming that the Commissioners could reasonably impose a requirement that they sign or approve every bill before the treasurer pays it under their Section 251 duty to "examine...accounts", such nonapproval could be exercised only in aid of their general fiscal and accounting powers and duties under the statutes. For example, the Commissioners could certainly prevent a mistaken or intentional overpayment by the treasurer. And the duty to "examine...accounts" and see to the "management of [the County's] business" under Section 251 would allow them to anticipate and prevent excessive expenditures. If, for example, a department had spent eighty per-cent of its commodities budget prior to March 1, the Commissioners could prevent further expenditures.

However, the Commissioners cannot use the device of refusing to sign a bill or warrant to prevent an otherwise authorized expenditure which was within the authorized level of spending simply because they didn't want the money spent either at all or for the particular purpose.

The Commissioners may exercise control over the level of spending through their control under 30 M.R.S.A. §252 (jointly with the Legislature under Sections 253 and 253-A) over the budget-making process; through their power to assure that county officers do not overspend their budgets, discussed above; and through their direct control over the various salaries which by statute the Commissioners must set or approve, also discussed above.

The Commissioners in this instance acted properly in their vote to rescind the pay raises for the deputies, jail personnel and "clerk hire" in question. However, failure to sign the payroll alone might have been an improper and unauthorized method of controlling particular salaries or overall salary spending.

Very truly yours,



PETER G. BALLOU  
DEPUTY DISTRICT ATTORNEY

PGB:dca

cc: Sheriff Charles Sharpe

Francis Mulkern, Register of Probate

Edward I. Bernstein, Register of Deeds