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June 19, 1978

To: Robert J. Stolt, Commissioner, Department of Personnel
From: Kay R. H. Evans, Assistant Attorney General
Re: Interpretation and Implementation of P.L. 1977, c. 709

In your letter of April 20, 1978, you asked questions regarding the interpretation and implementation of P.L. 1977, c. 709, "An Act to Improve Administration of the Industrial Accident Commission,"^{1/} specifically with respect to its inter-operation with and impact on the personnel law and merit system. All of your specific questions^{2/} arise from a single issue: The weight to be given, in interpreting this statute, to the fiscal note which accompanied the bill, L.D. 2015,

1/ By P.L. 1977, c. 612, the name of the Commission was changed to "Workers Compensation Commission" by which it will be referred to in the remainder of this opinion.

2/ Your specific questions are as follows:

First page:

(1) Whether or not Chapter 709 requires establishment of new positions at the Industrial Accident Commission in strict compliance with the terms of the fiscal note appended to L.D. 2015 as amended by Committee Amendment A?

(2) Whether or not Chapter 709 requires or authorizes the Commission of Personnel to compensate Hearing Specialists (Court Reporters) at a salary equivalent to a Superior Court Reporter even though such action would contradict provisions of the Personnel Law, Chapter 147, PL 1975 and Chapter 712 of PL 1977?

Second page:

(1) Is the Commissioner of Personnel directed by implication by Chapter 709 to establish positions and classifications at the Industrial Accident Commission without regard to existing law and measured job content?

(2) Does Chapter 709 imply that the staff and organizational structure of the Industrial Accident Commission is to be determined by Chapter 709 and not by the Bureau of the Budget pursuant to existing law (e.g., 5 M.R.S.A. § 1662)?

(Cont. p. 2)

through the legislative process.^{3/}

Fiscal notes are evidence of legislative intent. As such, their utilization in statutory interpretation is determined according to the rules of statutory construction. As extrinsic aids to construction, fiscal notes may be consulted when the statute in question is ambiguous or incomplete. Further, fiscal notes which suggest job classification and salaries should be given strong weight when, as in this case, they are combined with enacted personnel authorizations and appropriations for such positions. In such cases, the legislature has confirmed the intent stated in the fiscal note by a specific enactment.

Chapter 709, § 8, provides for the appropriation of a sum of money for personal services. A numerical notation in § 8 indicates that the sum appropriated relates to eight positions.^{4/} Apart from § 2, relating to the number of Commission members and their salaries, no other directives or guidelines as to the distribution and expenditure of the appropriated amount are included in the Act. Obviously, information from other sources must be drawn on to flesh out the bare framework of position count and appropriated funds. Sources presented to and relied on by legislative committees and by the Legislature itself in enacting appropriations measures are essential to the interpretation and implementation of those measures.^{5/} The Legislature,

2/ Cont.

(3) Is the Commissioner of Personnel and/or the Personnel Board precluded by Chapter 709 from ever changing the classification of a position established by Chapter 709?

(4) If Chapter 709 establishes the salary of the Hearing Specialist at a rate equivalent to that paid a Superior Court Reporter, is such a Hearing Specialist, who is also a member of a bargaining unit, precluded from receiving increases in compensation awarded thru contract to members of the bargaining unit generally?

3/ L.D. 2015 was amended by Committee Amendment "A" (S-555), and a new fiscal note reflecting the changes was printed with the amendment. The "court reporter" item, unaffected by the amendment, is the same in both fiscal notes.

4/ See P.L. 1977, c. 712, § 3, made applicable to c. 709 by § 18 of c. 712.

5/ The positions and appropriation in L.D. 2015 were drawn from the report of the Joint Select Committee on Workmens Compensation, pp. 3-4, and appeared in the draft legislation prepared by the Committee and included in its report.

by rule,^{6/} requires that fiscal notes accompany all bills "affecting revenue or appropriations," an indication of the importance it attaches to having such information at hand while it considers such a measure.

Here, the position count and related appropriations, amplified by the fiscal note, do not establish an entire personnel law with respect to the positions specified in the note. Thus, for example, c. 709 establishes a new salary level for Industrial Accident Commission hearings reporters. There is nothing to indicate this change is not to be carried out insofar as possible within the confines of existing personnel law and accomplished according to existing applicable administrative procedures. The same general principles are applicable to each of your specific questions: Where Chapter 709 and existing law converge, they are to be interpreted and implemented to give maximum effect to both. By adopting a new classification for reporters and assigning such classification a salary grade which most nearly approximates the court reporter salary, the intent of c. 709 may be implemented consistently with the requirements of the personnel law and with P & S L 1975, c. 147.

Because some of your questions, specifically numbers 3 and 4 on page 2 of your request, present hypothetical issues, it is deemed better not to respond specifically at this time. However, the general principles discussed above are considered applicable to these questions as well.

Kay R. H. Evans

KAY R. H. EVANS

Assistant Attorney General

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6/ Joint Legislative Rule 28, as it appears in the 1977 Senate and House Register, reads:

Every bill or resolve affecting revenue or appropriations shall be accompanied by a written statement as to the amount involved.

Joint Rule 28 was amended effective April 4, 1978, to read:

Every bill or resolve affecting revenue or appropriations which has a committee recommendation other than "ought not to pass" shall include a fiscal impact statement. This statement shall be incorporated in the bill before it is referred out of committee. The Office of Legislative Finance shall have sole responsibility for preparing these fiscal notes.

If "incorporated in the bill" means that "fiscal impact statements" will be a part of a bill as enacted, questions such as your present one should arise less frequently in the future.