

# MAINE STATE LEGISLATURE

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Manpower Affairs Commission Appointment  
20 MRSR 1401-2

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July 17, 1978

To: Seth W. Thornton, Temporary Deputy  
Commissioner of Manpower Affairs,  
Department of Manpower Affairs

From: Allan A. Toubman, Asst. Atty. Gen'l  
Department of Attorney General

Subject: Public Law 1977, c. 674

This office has been requested to interpret Public Law 1977, c. 674, as it relates to certain positions in the Department of Manpower Affairs. This opinion may be summarized as follows:

The following positions in the Department of Manpower Affairs are in the classified state service, and individuals filling them do not serve at the pleasure of the Commissioner of Manpower Affairs (hereinafter the "Commissioner"):

Director, Manpower Adjudication Division  
Division Director, Manpower Affairs  
Director, Manpower Affairs Administrative Service  
Director, Manpower Research  
(hereinafter "subject positions")

The Legislative history of P.L. 1977, c. 674, commenced with its introduction to the 1978 Legislature as 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. L.D. 2111 effected, among other positions, the subject positions. Section 6, amended 5 M.R.S.A. § 711, by adding the subject employees to the unclassified state service. Section 27, amended 26 M.R.S.A. § 1401 (2) to allow the Commissioner of Manpower Affairs to appoint persons to serve at his pleasure in the subject positions.

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House Amendment B to L.D. 2111 removed the subject positions from § 711. The reason for their deletion, according to that Amendment's Statement of Fact, was:

"This amendment provides that the 4 positions shall be classified positions. They are required to be classified as a condition of receiving federal grant funds."

Two questions are raised by the Public Law 1977, c. 674. First, whether the subject positions are in the unclassified service. Second, whether persons appointed to these positions serve at the pleasure of the Commissioner of Manpower Affairs.

The subject positions are now, and will continue to be, classified under Public Law 1977, c. 674. While L.D. 2111, originally included the subject positions in § 711, they were deleted by Amendment B, which stated that they should remain classified, since federal grants are conditioned on their being within a merit system of personnel administration. 42 U.S.C. § 503(a)(1); 20 C.F.R. § 602.15.

Title 26 M.R.S.A. § 1401(2) was amended by Public Law 1977, c. 674, § 25, to provide that the Commissioner of Manpower Affairs may appoint persons to serve at his pleasure in the subject positions, "provided these appointments are consistent with the Law...."

If the condition of consistency with the law is not met, the persons who fill the subject positions cannot serve at the pleasure of the Commissioner. The purpose of this condition may have been to cover those situations where there are other legal restraints on having personnel serve at the pleasure of an appointed or elected official. In this case, there are two legal restraints. First: The Legislature has specifically included the subject positions in the classified service in House Amendment B. Classified employees do not serve at the pleasure of a department head. 5 M.R.S.A. §§ 674, 678. Second: Federal funding is dependent on maintaining a merit system for the subject positions. 42 U.S.C. § 503(a)(1); 20 CFR 602.15, Employment Security Manual, Part I, 0595 (B)(1). The Legislature has directed that all regulations of the U.S. Department of Labor which must be met to obtain funds shall be complied with. Title 26 M.R.S.A. § 1082(11). It is not consistent with the House Amendment B or 26 M.R.S.A. § 1082(11) to fill these positions with persons appointed to serve at the pleasure of the Commissioner.

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Allan A. Toubman