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79-34
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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 28, 1979

To: George A. Henry, Personnel Officer, Department of
Human Services

From: Richard S. Cohen, Attorney General

Re: Title 5 § 711(2)(A)(6)(d), (e), (f) and (g)

You requested an opinion from this office on certain aspects of Title 5 § 711, as repealed and replaced by P.L. 1977, c. 674, enacted by the 108th Legislature at its Second Regular Session. Your opinion request notes that the positions listed in sub-§ 2(A)(6)(d), (e), (f) and (g) of § 711^{1/} "become unclassified with the effective date of this law."^{2/} You have asked: (a) "what is the effective date of this Law?" and (b) "how long do [present incumbents of these positions] have protection before being subject to removal?" The brief answers to these questions are: (a) the effective date of the law is July 6, 1978, and (b) present incumbents of the positions about which you have inquired are not subject to removal under this law^{3/} until January 1, 1983.

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- 1/ Respectively, Director, Bureau of Health; Director, Bureau of Rehabilitation; Director, Bureau of Social Welfare; Director, State Health Planning and Development Agency, all in the Department of Human Services.
 - 2/ The positions listed in (a), (b) and (c) of sub-§ 2(A)(6), -- respectively, Deputy Commissioners; Director, Bureau of Maine's Elderly; and Director, Bureau of Resource Development -- were previously placed in the unclassified service by P.L. 1975, c. 755, § 4, effective April 13, 1976.
 - 3/ Present incumbents of or a person on leave of absence from these positions may retain the position in the classified service until January 1, 1983. Removal of such an incumbent or person on leave is governed by the relevant Personnel Law and Rules until January 1, 1983.

OPINION:

Present § 711 of Title 5 was enacted by P.L. 1977, c. 674. Nothing in chapter 674 indicates an effective date other than the ordinary date, constitutionally provided,^{4/} 90 days after recess of the enacting Legislature. The Second Regular Session of the 108th Legislature adjourned on April 6, 1978. Thus, c. 674 was effective July 6, 1978.

Your second question arises because of an apparent conflict between ¶¶ A and B of sub-§ 2 of § 711. Paragraph B provides, in relevant part:

Except as otherwise provided by law, the head of the department or agency in which a major policy-influencing position is located shall have the power to appoint and remove persons to and from these positions on or after January 1, 1979, provided that if any position is subject to the Personnel Law on December 31, 1978, then the incumbent of the position or person on leave of absence from the position on December 31, 1978, may:

- (1) Retain his appointment subject to the Personnel Law until January 1, 1983; or
- (2) If the incumbent is appointed for a term, retain the position until the earlier of either the expiration of the term or January 1, 1983.

That portion of ¶ B underscored above appears on its face to provide that the incumbent of a major policy-influencing position whose position was "subject to the Personnel Law^{5/} on December 31, 1978" could retain that position until January 1, 1983. Such an incumbent, among them the incumbents of the positions here in question, would be "grandfathered"; that is, could retain the position in the classified service until 1983 and would not be subject to removal by the department or agency head as of January 1, 1979, but would be immune from such action until January 1, 1983.^{6/}

^{4/} Article IV, Pt. 3, § 16, of the Maine Constitution. Section 16 uses the term "recess"; the 90 days in fact run from the date of adjournment of the enacting session, Article IV, Part 3, § 20.

^{5/} "Subject to the Personnel Law" is a term of art used by the Maine Legislature to indicate that a position is in the classified service. See M.R.S.A. passim and Attorney General's Opinion to Otto W. Seibert, State Budget Officer, July 15, 1977.

^{6/} See fn. 3, supra.

Paragraph A of sub-§ 2 designates by department the "major policy-influencing" positions in state government. Paragraph A on its face, in the light of the effective date of the law, places in the unclassified service as of July 6, 1978, all of the positions designated therein which were not already in the unclassified service by operation of prior law, among them the positions in question. Therefore, since all "major policy-influencing positions" would have been placed in the unclassified service by July 6, 1978, at the latest, there would be no such positions in the classified service ("subject to the Personnel Law") as of December 31, 1978. The grandfather clause of paragraph B, clearly applicable only to "major policy-influencing positions" and among those only to those still "subject to the Personnel Law on December 31, 1978," would be void and ineffective in the light of ¶ A. Its passage as a part of c. 674 would have been an act "of self-defeating absurdity" which is "not to be attributed to the Legislature if there are reasonable alternatives by which it may be avoided. . . ." State v. Denis, 302 A.2d 377, 381 (Me., 1973).

Legislative enactments are to be read as a whole and every part, insofar as possible, is to be given effect. Hanbro, Inc. v. Johnson, 181 A.2d 249, 251 (Me., 1962). The effect to be given is that intended by the Legislature, which is first to be sought in the language of the statute. Here the language reveals two contradictory "intents." Where the statutory language presents such an internal conflict, it is permissible to look beyond the language to other indicators of intent.

Relevant to the interpretation of L.D. 2111, as enacted, are a Committee Report^{7/} and the original draft of the legislation.^{8/} The Committee Report states, at pp. 15-16:

Recommendation 4. The commissioner to whom a policy position reports should have the power to appoint and remove persons to and from the position, beginning with the effective date of authorizing legislation; provided that (a) incumbents of currently classified policy positions which are unclassified by such legislation may, at their option, retain the position in classified status until January 1, 1982; and (b), incumbents of policy positions currently classified who were appointed for a term may, at their option, retain their position until the earlier of either the expiration of their term or January 1, 1982. (underscored original)

7/ Committee on State Government, "Report on the Classification of Policy Positions in State Government," 1976.

8/ L.D. 729, submitted to the 1st Regular Session of the 108th Legislature and recommitted; reported at the 2nd Regular Session Ought to Pass in New Draft, L.D. 2111.

. . . As a matter of equity for persons who have accepted policy positions under the classified service or for a term, the Committee recommends that they be permitted to retain the position for a period of 4 years or through the expiration of their term, whichever is earlier. The Committee feels that a period of 4 years is sufficient to permit the making of other employment arrangements, should they be needed.

This recommendation is included in abbreviated form in the Summary of Recommendations at p. 2 of the Report. The draft legislation included in the Committee Report, which became L.D. 729, contained language identical to present ¶ B in all respects here pertinent,^{9/} except that the dates were one year earlier since earlier passage was then anticipated. Recommitment resulted in a new draft, L.D. 2111, in which the provision in question appears as enacted. The Statements of Fact attached to both L.D. 729 and L.D. 2111 state that the bill includes a clause grandfathering incumbents for four years. When L.D. 2111 came to the floor, references were made to the grandfather provision^{10/} in the nature of assumptions and assurances that such a provision was part of the bill and would be effective. It seems clear that the Legislature intended to enact and thought it was enacting a statute which included an effective grandfather provision.

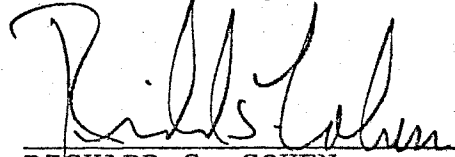
Where it appears that the intent and purpose of a legislative enactment is other than that indicated by the statutory language read literally, the literal meaning is not binding. Ballard v. Edgar, 268 A.2d 884, 885 (Me., 1970) (citing cases). If statutory language fails to express manifest legislative intention, more adequate language may be interpolated, State v. Denis, supra, at 382, since the purpose of statutory interpretation is to "effectuate the intent of the Legislature, not its oversights." Canning v. State Department of Transportation, 347 A.2d 605, 608 (Me., 1975).

The relevant legislative intent seems clearly to have been to permit incumbents of those major policy-influencing positions which were placed in the unclassified service by operation of P.L. 1977, c. 674, to elect to retain their positions, as

9/ The reference in line 3 of ¶ B to "these positions" was changed from "such positions" and "person on leave of absence from the position" was added in line 6, extending the apparent reach of the clause.

10/ 1977 Legislative Record, 108th Legislature, 2nd Regular Session, p. 351 (two references). (When this portion of the 108th Legislature is bound, it will be V. III of the 1977 Legislative Record and the page number will be changed.)

classified positions, until January 1, 1983. Paragraph B of sub-§ 2 of § 711 should be read to have that effect, the operation of ¶ A notwithstanding. Accordingly, it is our opinion that the present incumbents of the positions listed in § 711(2) (A) (6) (d), (e), (f) and (g) may elect to retain their positions, in the classified service, until January 1, 1983, and are not subject to removal under P.L. 1977, c. 674^{11/} until that date.^{12/}



RICHARD S. COHEN
Attorney General

RSC/ec

^{11/} But see fn. 3, supra.

^{12/} This opinion is limited to the four positions which were the subject of your inquiry.