

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

79-117

Inter-Departmental Memorandum Date June 13, 1979

To Dan Harlan

Dept. Agriculture

From Robert J. Stolt, Deputy

Dept. Attorney General

Subject Interpretation of 36 M.R.S.A. § 4563, subsection 5

## Memorandum of Counsel

This responds to your request for an interpretation of 36 M.R.S.A. § 4563, subsection 5, as it related to the personnel law and the provisions therein for setting compensation.

Section 4563(5) authorizes the Maine Potato Commission, inter alia, to fix the compensation of the Executive Director and the Executive Director to engage other personnel. "Neither the employment of the executive director . . . nor the employment of other employees by the executive director shall be subject to the Personnel Law."

The authority granted by section 4563(5) is similar to the authority referred to in our opinion to the Board of Nursing, a copy of which is enclosed. Its provisions are among those considered in the footnote on the first page of that opinion. The Legislature has in each succeeding year required the State Budget Officer and the Commissioner of Personnel ". . . to ensure that classified and unclassified positions are assigned to a proper pay grade within authorized funds." See P.L. 1979, c. 164, § 4, and Kempton v. Zitnay, 391 Me. 341 (Me., 1978). Hence, classified or unclassified positions, not subject to the Governor's determination which were assigned to a pay grade as recommended by the Hay Study or the Temporary Compensation Review Board, or in the case of positions created thereafter which have been assigned to a proper pay grade by the Commissioner of Personnel within authorized funds as ascertained by the State Budget Officer, are subject to the guidelines enunciated in our September 1976 opinion to the Board of Nursing. The only exceptions are positions whose compensation is subject to the Governor's determination; established by statute; within the constitutional purview of a constitutional officer; within the purview of the Legislature or the Legislative Council; or authorized by a statutory scheme enacted after P. & S.L. 1975, c. 147. Opinion of the Attorney General, September 21, 1976, supra.

In this instance the authority of section 4563(5) was in existence in 1975 and the positions to which it refers were considered by the Hay Study, T.C.R.B., the Commissioner of Personnel and the State Budget Officer. The words "subject to the Personnel Law" are irrelevant to the question of compensation, as those words speak to selection and tenure, i.e., classified vs. unclassified employment status. For a clearer understanding, see our opinions of May 10, 1976, to Lee M. Schepps, Director of the Bureau of Public Lands, and April 12, 1974, to G. Arnold Roach, Chairman of the Maine Potato Commission, copies attached for your convenience.

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ROBERT J. STOLT  
Deputy Attorney General

RJS:mfe

Enc.