

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333  
July 30, 1979

Honorable J. P. Normand LaPlante  
Turcotte Road  
Sabattus, Maine 04280

Dear Representative LaPlante:

On April 2, 1979, the Bureau of Civil Emergency Preparedness advised all county and local governments of their obligations to county and local employees working in the C.E.P. program resulting from the pay package negotiated between the State and the M.S.E.A.

The advice was as follows:

"these State pay raises do not have to be passed on to County employees that are under your State Personnel Merit System. Each County and Local Government is responsible for the wages of their employees."

This advice was based on an inquiry by the Bureau of Civil Emergency Preparedness to the Federal Defense Civil Preparedness Agency. I am attaching copies of the correspondence between the Maine Bureau of Civil Emergency Preparedness and the Federal Defense Civil Preparedness Agency in this matter.

Salaries for some county officials are set specifically by statute, for example Chapter 82 of the Public Laws of 1979 increased the current salaries of certain county officials throughout the State. I have attached a copy of Chapter 82 for your review. You will note that the Legislature has set specific salaries for officials such as Sheriff, Judge of Probate and County Commissioners, but not for employees. Employee salaries are set by the County Commissioners within the personal services funding limits set by the legislation in the county budget. Chapter 23 of the Resolves of 1979 established the budget for Androscoggin County for calendar year 1979. Of particular interest is Appropriation Account No. 1015 for Civil Emergency Preparedness functions of Androscoggin County. Within that account \$66,229.00 is appropriated for personal services.

You have asked whether or not Androscoggin County Civil Emergency Preparedness employees may be granted a pay raise by the county commissioners without the approval of the county delegation of the Legislature?

The answer to your question is in the affirmative. The county commissioners may grant pay raises to county C.E.P. employees without the approval of the county delegation or the Legislature. In our opinion of February 28, 1979 (copy attached) we said:

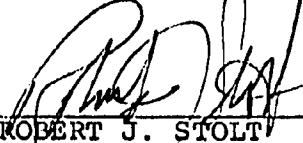
30 M.R.S.A. §201 (1978) provides that "[t]he county commissioners in each county may appoint some suitable person to serve as clerk to the county commissioners . . . ." Section 801 of Title 30 also provides that "[t]he salary of all clerks shall be determined by the county commissioners after receiving a recommendation from the county officer under whom such clerk is employed." In view of the foregoing statutory provisions, it is apparent that the county commissioners have both the authority and the duty to control county expenditures, including setting the compensation of those employees whose salaries are not fixed by statute. See, e.g., Sheltra v. Auger, Me. 376 A.2d 463, 464 (1977); Watts Detective Agency, Inc. v. Inhabitants of County of Sagadahoc, 137 Me. 233, 237-38 (1941).

While the county commissioners may set the compensation of county employees, they must do so within the confines of the budget approval process set forth in 30 M.R.S.A. §252. Again, as we said in our opinion of February 28, 1979:

As part of the county budget review process, the Legislature has "the power to change or alter specific line categories within the county estimates." 30 M.R.S.A. §253-A (1978). The salaries for all county officers and employees within a department or agency appear in the county estimates for that department or agency under the category of "Personal Services." In view of its statutory authority to make changes or alterations in "specific line categories within the county estimates," the Legislature may increase or decrease the appropriation available for personal services within a county department or agency. Consequently, the county commissioners have statutory discretion to set the salary for a county clerk, but the Legislature, via the county budget review process, can set a ceiling on the funds available for salaries and wages within a department or agency of county government. See Op. Atty. Gen., February 1, 1976; Op. Atty. Gen., February 1, 1977.

In the case at hand, the Androscoggin County Commissioners may grant pay raises to county C.E.P. employees as long as the cost of

those pay raises comes within the amount budgeted for personal services or the flexibility given the Commissioners to adjust those amounts through intradepartmental transfers or use of the contingent account. 30 M.R.S.A. §§251 and 252.\*

  
\_\_\_\_\_  
ROBERT J. STOLT  
Deputy Attorney General

RJS:jg

---

\* The use of intradepartmental transfers and the contingent account is discussed more fully in the enclosed opinion.

RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

February 28, 1979

Honorable Frank Wood  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Wood:

This letter will respond to your oral request for an opinion regarding the Legislature's authority to regulate the salaries paid to certain county employees. In particular, you have inquired regarding the extent to which the Legislature, by means of the county budget review process, can regulate the salary of a county clerk.

30 M.R.S.A. §201 (1978) provides that "[t]he county commissioners in each county may appoint some suitable person to serve as clerk to the county commissioners...." Section 801 of Title 30 also provides that "[t]he 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." In view of the foregoing statutory provisions, it is apparent that the county commissioners have both the authority and the duty to control county expenditures, including setting the compensation of those employees whose salaries are not fixed by statute. See, e.g., Sheltra v. Auger, Me., 376 A.2d 463, 464 (1977); Watts Detective Agency, Inc. v. Inhabitants of County of Sagadahoc, 137 Me. 233, 237-38 (1941).

However, the county commissioners are created by statute and the authority of the county commissioners to control county expenditures is subject to the ultimate control of the Legislature. See State v. Vallee, 136 Me. 432, 446 (1940). It is the responsibility of the county commissioners to assess a county tax each year and in doing so they are required to prepare estimates of the anticipated expenditures for the year. 30 M.R.S.A. §252 (1978). It is provided by statute that these estimates

"...shall be drawn so as to authorize the appropriations to be made to each department or agency of the county government for the year. Such estimates shall provide specific amounts for personal services, contractual services, commodities, debt service and capital

Honorable Frank Wood  
February 27, 1979  
Page two

expenditures." 30 M.R.S.A. §252 (1978).

The county estimates are submitted to the Legislature for review and approval. 30 M.R.S.A. §253 (1978). The county estimates, as amended and adopted by the Legislature, constitute the county budget. Id.

As part of the county budget review process, the Legislature has "the power to change or alter specific line categories within the county estimates." 30 M.R.S.A. §253-A (1978). The salaries for all county officers and employees within a department or agency appear in the county estimates for that department or agency under the category of "Personal Services."<sup>1</sup> In view of its statutory authority to make changes or alterations in "specific line categories within the county estimates," the Legislature may increase or decrease the appropriation available for personal services within a county department or agency. Consequently, the county commissioners have statutory discretion to set the salary for a county clerk, but the Legislature, via the county budget review process, can set a ceiling on the funds available for salaries and wages within a department or agency of county government. See Op. Atty. Gen., February 12, 1976; Op. Atty. Gen., February 1, 1977.

You have also inquired whether the county commissioners can increase the legislatively approved appropriation for personal services within a department or agency, by means of intra-departmental transfers or use of the contingency fund. 30 M.R.S.A. §252 (1978) provides in relevant part:

"Whenever any specific appropriation of a department or agency of county government shall prove insufficient to pay the required expenditures for the statutory purposes for which such appropriation was made, the county commissioners may, upon written request of such department or agency, transfer from any other specific line appropriation of the same department or agency an amount as required to meet such expenditures, provided that such request shall bear the written approval of the majority of the county commissioners.

There is established a contingent account in each county in an amount not to exceed \$50,000. Such funds as are available to each county may be used for this purpose. This

---

1. Each department or agency of county government also submits a "Salaries and Wages Detail Sheet" which lists the estimated salaries and wages by position.

Honorable Frank Wood  
February 27, 1979  
Page three

fund shall be used for emergency purposes only at the discretion of the county commissioners."

By permitting the county commissioners to make intra-departmental transfers and to use the contingent account, the Legislature obviously recognized that unforeseen circumstances may necessitate a deviation from the legislatively approved county budget. See Op. Atty. Gen., February 1, 1977; Op. Atty. Gen., June 22, 1977. The ability to utilize the contingent account and to make intra-departmental transfers affords the county commissioners some degree of flexibility in administering the fiscal affairs of the county. See 30 M.R.S.A. §251(1978 Supp.)<sup>2</sup>

With respect to intra-departmental transfers, it is apparent that such transfers are permissible only where a specific appropriation proves insufficient for the statutory purposes for which it was made. Where the Legislature has approved a specific appropriation for personal services for a county department or agency, it would seem that such appropriation would never prove insufficient for the statutory purposes for which it was made.

Use of the contingent account is allowable only for "emergency purposes." What constitutes an emergency within the meaning of 30 M.R.S.A. §252 (1978 Supp.) is for the county commissioners, acting within the range of their statutory discretion, to decide. I would point out, however, that we have indicated on several occasions that intra-department transfers and transfers from the contingent account should not be used as devices to frustrate legislative intent. Op. Atty. Gen., June 22, 1977; Op. Atty. Gen., February 1, 1977; Op. Atty. Gen., February 12, 1976.

---

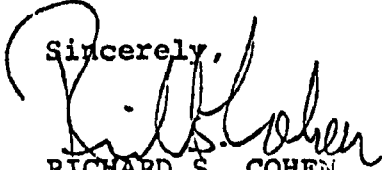
2. 30 M.R.S.A. §251 (1978 Supp.) provides in pertinent part:

"They [the county commissioners] shall examine, allow and settle accounts of the receipts and expenditures of the moneys of the county; represent it; have the care of its property and management of its business;...keep their books and accounts on such forms and in such manner as shall be approved by the State Department of Audit; and perform all other duties required by law."

Honorable Frank Wood  
February 27, 1979  
Page four

I have taken the liberty of attaching copies of four opinions from this office, which deal with matters similar to those you have raised.<sup>3</sup> I hope this information is helpful. Please feel free to call upon me again if I can be of further assistance.

Sincerely,



RICHARD S. COHEN  
Attorney General

Enclosures

---

3. The opinions are dated April 30, 1975, February 12, 1976, February 1, 1977, June 22, 1977.



Inter-Departmental Memorandum Date April 2, 1979

o All Counties & Subdivisions Dept. Civil Emergency Preparedness  
From Administrative Officer Dept. Civil Emergency Preparedness  
Subject Potential Pay Raises For State Employees.

---

---

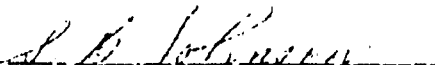
We have written to DCPA Region I requesting a ruling relative to the potential pay raises negotiated between the State of Maine and the union and its effect relative to County and Local Employees.

The following is an excerpt from the reply received at this office this date:

"We have determined that these State pay raises do not have to be passed on to County employees that are under your State Personnel Merit System. Each County and Local Government is responsible for the wages of their employees."

The above statement means that any pay raises or wages paid to employees working for C.E.P. in the Counties and Locals will be determined strictly by the governing body in that entity. We request that this information be passed on to any of your locals that have employees involved and paid for working in the C.E.P. program.

This headquarters is aware at the present time of all wages being paid now and any changes made in the future should be forwarded to us immediately.

  
\_\_\_\_\_  
Scott B. Johnson  
Administrative Officer

## Organization

Wide latitude has always been permitted in the organization and management of merit systems where substantially all employees in the State and local government are covered by that system, but fairly detailed requirements were prescribed for approximately one third of the States which establish cooperative inter-agency merit systems to meet the Federal requirement. This distinction is removed in these standards and various types of personnel organizations are accepted as long as they provide for impartial administration of the personnel system.

Another significant change is a waiver of the Standards for small local governments not now covered by a State or local merit system, if the chief executive agrees to administer grant-aided programs consistent with the six merit principles in the Inter-governmental Personnel Act. This recognizes that in many small local governments it may not be cost effective to establish a merit personnel system solely in order to be eligible for Federal grants.

Reference: FEDERAL REGISTER, dated Friday, February 16, 1979, Part III

Office of Personnel Management

Standards for a Merit System of Personnel Administration

Final Rule; Revision



**DEFENSE CIVIL PREPAREDNESS AGENCY**  
**Region One**  
**Federal Regional Center**  
**Maynard, Massachusetts 01754**

March 29, 1979

Mr. Leslie B. Higgins  
Acting Director  
Bureau of Civil Emergency Preparedness  
State Office Building  
Augusta, Maine 04330

Attention: Mr. Scott B. Johnson  
Administrative Officer

Dear Mr. Higgins:

We have reviewed your correspondence dated March 21, 1979 concerning pay raises that were voted for all State employees. We have determined that these State pay raises do not have to be passed on to County employees that are under your State personnel Merit System. Each County government is responsible for the wages of their employees in their own County.

Our only requirement is that County and Local employees be governed by an accepted personnel Merit System, i. e., State, County, or Local. Mr. Foxwell and Mr. McDonald, of my office, have discussed this matter and Mr. Foxwell has determined that there will be no audit exceptions on County wages as determined by County government. They do not have to be equal to State employees wages.

Sincerely,

A handwritten signature in dark ink, appearing to read "Allan R. Zenowitz".

Allan R. Zenowitz  
Regional Director



## BUREAU OF CIVIL EMERGENCY PREPAREDNESS

STATE HOUSE • AUGUSTA, MAINE 04223 • (207) 622 6201

— DEPARTMENT OF MILITARY • CIVIL EMERGENCY PREPAREDNESS • VETERANS SERVICES —

March 21, 1979  
Ltr. #109-79-2

Allan R. Zenowitz, Director  
Defense Civil Preparedness Agency  
Region One - Federal Regional Center  
Maynard, Massachusetts 01754

Attn: Don Foxwell & John McDonald

Dear Mr. Zenowitz:

This letter is in reference to a contract arrived at between the Maine State Employees Association and the State of Maine for pay raises effective shortly. With regard to these pay raises, we are asking for a clarification of how they will affect county and local employees. These employees are not considered state employees; hence they are not directly involved but are governed by the State Personnel Merit System because counties and locals do not have an established merit system.

Relative to wages, the following will apply to state employees:

1. A payment of \$15.00 per week retroactive to July 1, 1978 thru March, 1979 will be made in a one-time payment. This \$15.00 per week will not be added to the base pay. We are assuming, since this one-time payment is not added to the base pay, that payment of same to county and local employees would be optional to the entity involved.

2. April 1, 1979 there will be added to the state employees' pay \$16.00 per week. July 1, 1979 there will be added another \$15.00 or 6% to the state employees' base pay.

The first paragraph of this letter refers to a clarification of DCPA requirements for matching funds for the county and local employees so that there will be no question in anyone's mind as to how these raises should apply. All raises mentioned are for full time (40 hr.), permanent personnel.

Problems that will be encountered particularly in the County Headquarters are:

1. A lack of funds.
2. Raises, if applicable, could in some cases bring the emploȳee pay up equal to the County Director or possibly more.
3. Employees working for C.E.P. in the counties could very well be drawing more pay in comparison to other county workers doing comparative work and this would tend to create morale problems.

An early reply is requested so we can inform all concerned in order that they can take the necessary steps to comply with DCPA requirements.

Sincerely,

Leslie B. Higgins  
Acting Director

By:  
Scott B. Johnson  
Administrative Officer.