

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date January 22, 1980

Maine Criminal Justice Planning

To Richard Perkins, Exec. Dir.

Dept. & Assistance Agency

From Robert J. Stolt, Deputy

Dept. Attorney General

subject Executive Director MCJPAA SalaryMEMORANDUM OF COUNSEL

This memorandum responds to your request of December 28, 1979. You have asked our advice regarding the relative responsibilities of the MCJPAA Board of Directors and the Commissioner of Personnel in setting the salary of the MCJPAA Executive Director.

We have dealt with aspects of this issue in our previous opinions of September 21, 1976, to the State Board of Nursing and June 13, 1979, to the Department of Agriculture. I have attached copies of these opinions for your information. However, we have not previously determined the extent of the salary-setting authority of an appointing authority where the empowering statute conveys the power to employ but is silent as to the power to fix salary.

The Maine Criminal Justice Planning & Assistance Agency statutes give the Directors power ". . . to employ a full-time executive director who shall employ such additional staff as necessary with the approval of the directors" (emphasis supplied) 5 M.R.S.A. § 3353. A common definition of the word employ is:

"to use or engage the services of"

(Webster's Third New International Dictionary)

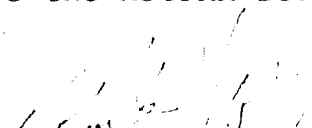
Employ carries with it the necessary implication that the job provided pays wages or a salary. The practice of the Directors since enactment of § 3353 has been to fix the compensation of the Executive Director. It is a well-settled principle in Maine law that a public officer may exercise only that power which is conferred upon him by law. The source of that authority must be found in the enabling statute either expressly or by necessary inference as an incidence essential to the full exercise of the power specifically granted. See State v. Fin & Feather Club, 1974, Me., 316 A.2d 351, 355; Town of Windham v. Lapointe, 1973, 308 A.2d 286, 290; Churchill v. School Administrative District No. 49 Teachers Association, Me., 1978, 380 A.2d 186, 192. The only limitation which has been placed upon the Board of Directors' authority to set the compensation of the Executive Director is that created by enactment of chapter 147, Part D, P. & S.L., 1975. Chapter 147, Part D, Section 2, assigns unclassified positions, like the MJCPAA Executive Director position, to pay ranges in the State Compensation Plan. By the Chapter 147 process the Executive Director position is currently assigned to

pay range 33. Chapter 147 further requires the Commissioner of Personnel and the State Budget Officer to ensure proper assignment of unclassified positions to pay ranges. That authority, shared with the State Budget Officer, has been carried forward in each subsequent appropriations law. See e.g. chapter 164, section 4, P.L. 1979.

We addressed the extent of the limitation placed upon appointing authorities by chapter 147 in our opinion to the Board of Nursing:

". . . Thus, the Legislature has, through adoption of Part D, § 2, limited the capacity of appointing authorities to set salaries to steps within ranges which are established. However, the employing authority retains the capacity to set the particular step within the range at which the pay is to be computed" (emphasis supplied)

The role of the Commissioner of Personnel and the State Budget Officer in determining salaries to be paid unclassified employees covered by chapter 147, Part D is to ensure that those employees' positions are assigned to proper pay ranges within authorized funds. They have no role in determining the step within the range. The authority to fix the step belongs exclusively to the appointing authority, here the MJCPAA Board of Directors.



ROBERT J. STOLT
Deputy Attorney General

RJS:mfe

Enclosures

cc: Bill Buker, State Budget
Jadine O'Brien, Personnel