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

September 10, 1980

Honorable David G. Huber
430 Blackstrap Road
Falmouth, Maine 04105

Dear Senator Huber:

This will respond to your letter of August 4, 1980 in which you have requested our opinion as to whether, and to what extent, the Chairman and Members of the Public Utilities Commission are entitled to a salary increase. In particular, you have questioned the action of the Commissioner of Personnel pursuant to which the Chairman and Members of the Public Utilities Commission were granted a salary increase amounting to approximately 20.2%. It should be recognized that this action by the Commissioner of Personnel was predicated upon advice contained in a one-page "Memorandum of Counsel" issued on July 15, 1980 by a member of my staff.

For the reasons discussed below, we conclude that the Chairman and Members of the Public Utilities Commission are only entitled to a salary increase of 7% or \$14 per week, whichever is greater. Consequently, to the extent that the "Memorandum of Counsel" of July 15, 1980 is inconsistent with this conclusion, it should not be relied upon as the opinion of this office.

In 1978 the Legislature enacted Chapter 697 of the Public Laws of 1977, being "An Act to Facilitate Recruitment and Retention of Outstanding Persons for Policy-Making Positions in State Service." Section 2 of Chapter 697 created 2 M.R.S.A. §6-A to provide that the salary of the Chairman of the Public Utilities Commission "shall be within salary range 91." 2 M.R.S.A. §6-A(1) (1979). The Legislature also provided that the salaries of the Members of the Public Utilities Commission "shall be within salary range 89." 2 M.R.S.A. §6-A(2) (1979). Section 6-A specifically authorized the Governor to determine the salaries of the Commission Chairman and Members within the legislatively established salary ranges; "only at the time of appointment of the official." 2 M.R.S.A.

1. 2 M.R.S.A. §6-A (1979) provides in its entirety:

"Notwithstanding any other provisions of law, the Governor is authorized to adjust the salary ranges indicated herein only at the time of appoint-

§6-A (1979). Pursuant to 2 M.R.S.A. §6-A(1979), legislative action is required in order to increase the salaries of the Chairman and Members of the Commission once they are set by the Governor.

Section 6-A of Title 2 became effective on January 8, 1979. See P.L. 1977, c.697, §5. The present Chairman and Members of the Commission were appointed prior to this effective date. Accordingly, when 2 M.R.S.A. §6-A was enacted, the Legislature established specific salaries for the incumbent Chairman and Members of the Commission. By virtue of section 6 of Chapter 697, P.L. 1977, the Legislature provided:

"Beginning on the effective date of this Act, the salaries of the incumbents in the positions of chairman and members of the Public Utilities Commission shall be at Range 91, step C, and Range 89, step B, respectively. Persons appointed subsequently to these positions shall be paid salaries as provided elsewhere in this Act."

Thus, by operation of section 6, Chapter 697, P.L. 1977, the salary of the present Chairman of the Public Utilities Commission was set at Range 91, step C, and the salaries of the present Members of the Public Utilities Commission were set at Range 89, step B, and these salary adjustments were made effective on January 8, 1979.²

On May 23, 1979, Chapter 269 of the Public Laws of 1979 was enacted as emergency legislation. The purpose of this Act was to fund and implement the collective bargaining agreements entered into between the Maine State Employees Association and the State of Maine. In accordance with the collective bargaining agreements, Chapter 269 authorized and funded an initial 6% or \$16 per week salary increase for certain state employees effective April 1, 1979 and a second 6% or \$15 per week salary increase for these state employees effective July 1, 1979. See P.L. 1979, c.269,

ment of the official. The salary ranges shall be provided by law; except that for the purposes of this section, each salary range shall be increased by 2 steps in addition to and of an identical percentage increase as the steps in the range otherwise provided by law. No other state salary shall be paid to these officials.

1. Range 91. The salaries of the following state officials and employees shall be within salary range 91: Chairman, Public Utilities Commission.

2. Range 89. The salaries of the following state officials and employees shall be within salary range 89: Members, Public Utilities Commission."

2. In accordance with P.L. 1977, c.697, §6, and beginning on January 8, 1979, the salary of the Chairman of the Public Utilities Commission was increased from \$22,049.56 to

§§5, 6, 7.³ Section 9 of Chapter 269, P.L. 1979 granted the Governor discretion to "grant similar and equitable treatment" to those "individual unclassified employees whose wage rates are subject to the Governor's determination." As observed previously, the salaries of the present Chairman and Members of the Public Utilities Commission are not subject to the Governor's determination and, consequently, section 9 of Chapter 269, P.L. 1979 did not apply to those positions. Of critical significance for the purposes of this opinion is the language of section 10 of Chapter 269, P.L. 1979, which provides, in its entirety:

Section 10. Employees not subject to Governor's determination. With respect to classified and unclassified employees whose wage rates are not subject to determination by the Governor and not in classifications within any bargaining unit, the authorities responsible for determining the wage rates of such employees shall grant similar and equitable treatment consistent with the salary provisions agreed to in the Supervisory Services Bargaining Unit. This section shall not be construed to apply to officers and employees of the Legislative and Judicial Branches of the State of Maine or to officers whose salaries are set by the Maine Revised Statutes, Title 2, section 6-A, subsections 1 and 2 and by section 7. (emphasis added).

The last sentence of section 10 represents a clear expression of legislative intent that the Chairman and Members of the Public Utilities Commission, among others, were not to receive the salary increases authorized by Chapter 269.

On May 29, 1980, Chapter 109 of the Private and Special Laws of 1979 became effective as emergency legislation. Chapter 109, P.S. S.L. 1979 provided funding to implement the collective bargaining agreements between the State and the Maine State Employees Association for the fiscal year ending June 30, 1981. In

\$30,035.20 and the salaries of the Commission Members were increased from \$18,899.92 to \$25,334.40.

3. The collective bargaining agreements also provided for a retroactive lump sum payment of \$15 per week worked from July 1, 1978 to April 1, 1979.

accordance with the collective bargaining agreements, Chapter 109 authorized a salary increase for certain state employees of 7% or \$14 per week, whichever was greater, to become effective on June 29, 1980. See P. & S.L. 1979, c.109, §5.

The provisions of Chapter 109, P.&S.L. 1979 were not applicable to the Chairman and Members of the Public Utilities Commission. However, on May 29, 1980, Chapter 739 of the Public Laws of 1979 was also enacted as emergency legislation, section 6 of which provided:

"The current state salary schedules for confidential employees shall be adjusted at the start of the pay week closest to July 1, 1980 to reflect an increase of 7% or \$14 per week, whichever is greater, subject to the following provision. With respect to individual unclassified employees whose wage rates are subject to the Governor's determination or approval, the Governor may grant similar and equitable treatment consistent with this section."

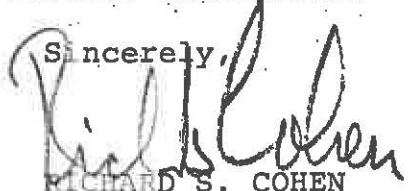
Section 3 of Chapter 739, P.L. 1979 defines the phrase "confidential employees" "as those within the Executive Branch who are excluded from bargaining units pursuant to the Maine Revised Statutes, Title 26, section 979-A, subsection 6, paragraphs B, C, D and H." 26 M.R.S.A. §979-A(6)(B)(1974) excludes from bargaining units, any person "[a]ppointed to office pursuant to statute, ordinance or resolution for a specified term by the Governor...." The Chairman and Members of the Public Utilities Commission are appointed by the Governor for a term of seven years. See 35 M.R.S.A. §1 (1978). In view of the foregoing, it is clear that the Chairman and Members of the Public Utilities Commission are "confidential employees" as that phrase is used in Chapter 739, P.L. 1979. Accordingly, it seems apparent to us, and we so conclude, that the Legislature intended that "confidential employees," including the Chairman and Members of the Public Utilities Commission, would receive the 7% or \$14 per week salary increase authorized by Chapter 739.

A clear pattern of legislative intent emerges when the provisions of 2 M.R.S.A. §6-A(1979), Chapter 269, P.L. 1979 and Chapter 739, P.L. 1979 are analyzed together. Effective January 8, 1979, 2 M.R.S.A. §6-A granted the Chairman and Members of the Public Utilities Commission substantial salary increases by establishing their salaries at Range 91, step C and Range 89, step B, respectively. See note 2 supra. Less than 5 months later the Legislature explicitly provided that the Commission Chairman and Members were not to receive the salary increases authorized by Chapter 269, P.L. 1979. See P.L. 1979, c.269, §10. One year later the Legislature again provided for salary increases for state employees and on that occasion mandated that the Chairman and Members of the Public Utilities Commission were to receive the 7% or \$14 per week salary increase authorized by Chapter 739, P.L. 1979. See P.L. 1979, c.739, §6. The conclusion is inescapable that in enacting Chapter 739, P.L. 1979 the Legislature intended that the Chairman and Members of the Public Utilities Commission would receive a 7% or \$14 per week pay raise

to their salaries, which had been established on January 8, 1979 by virtue of 2 M.R.S.A. §6-A(1979). We can perceive no intent on the part of the Legislature, when it enacted P.L. 1979, Chapter 739 on May 28, 1980, to grant to the Commission Chairman and Members the two 6% salary increases which the Legislature had denied to them one year earlier. On the contrary, the language of Chapter 739, P.L. 1979 clearly demonstrates the Legislature's intent that the Chairman and Members of the Public Utilities Commission were only to receive the 7% or \$14 per week salary increase authorized by that statute.⁴

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,


RICHARD S. COHEN
Attorney General

RSC:sm

4. We wish to emphasize that our opinion is limited to the present incumbents in the positions of Chairman and Members of the Public Utilities Commission. We intimate no opinion as to the effect, if any, of Chapters 269 and 739 of the Public Laws of 1979 on the salaries of persons appointed or re-appointed to those positions following a vacancy created by one of the present incumbents.