

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 26, 1981

To Robert Maxwell, Administrator Dept. Personnel

From William R. Stokes, Asst. A.G. Dept. Attorney General

Subject Interpretation of 5 M.R.S.A. §196 as amended by
P.L. 1981, c.67, Part F, §§1-2 (effective March 9, 1981).

This will respond to your request for an interpretation of the language of the last two sentences of 5 M.R.S.A. §196 as most recently amended by Chapter 67, Part F, §§1 and 2 of the Public Law of 1981, which provides:

"Notwithstanding any other provisions of law, the compensation of research assistants and deputy attorneys general shall be fixed by the Attorney General. The compensations of the staff attorneys, assistant attorneys general and secretary to the Attorney General shall be fixed by the Attorney General with the approval of the Governor, but such compensations shall not in the aggregate exceed the amount appropriated therefor and shall not result in an increased request to future Legislatures."²

1. Chapter 67 of the Public Laws of 1981 was approved by the Governor on March 9, 1981 as emergency legislation and became effective on that date.

2. Prior to the enactment of the amendments embodied in Chapter 67, Part F, §§1 and 2 of the Public Laws of 1981, the last two sentences of 5 M.R.S.A. §196 read as follows:

"The compensation of research assistants shall be fixed by the Attorney General. The compensations of the deputy attorneys general, staff attorneys, assistant attorneys general and secretary to the Attorney General shall be fixed by the Attorney General with the approval of the Governor, but such compensations shall not in the aggregate exceed the amount appropriated therefor and shall not result in an increased request to future Legislatures."

In particular, you have asked us to construe the language quoted above in light of Chapter 147, Part D §§ 2 and 3 of the Private and Special Laws of 1975 and a prior opinion of this Office dated September 21, 1976.

By virtue of P. & S.L. 1975, c.147, Part D, the Legislature established the "State Employees Salary Plan" (the so-called Hay Plan). See Kempton v. Zitnay, Me., 391 A.2d 341 (1978). Section 2 of Part D established the procedure for determining the compensation of those unclassified state employees³ whose salaries are not subject to determination by the Governor. It provides in relevant part:

"Unclassified employees not subject to Governor ...salary determination shall be assigned to the step in the salary range in Schedule I or Schedule Ia in section 3 in which their position is assigned...."

Section 3 of Part D further provides:

"The Personnel Director and State Budget Officer shall be responsible for ensuring that unclassified employees are assigned to a proper pay grade according to the same policy and procedure applicable to classified employees within authorized funds. Classified positions and unclassified employees not subject to Governor.... determination shall be assigned to the appropriate pay grade in the following schedule...."

In an inter-departmental memorandum dated September 21, 1976 we interpreted Chapter 147, Part D in light of the prior version of 5 M.R.S.A. §196 which authorized the Attorney General to fix the compensation of research assistants.⁴ We noted that there appeared to be a conflict between the two statutory enactments. In attempting to construe both laws in a harmonious fashion, we stated:

"The Legislature in enacting Part D, §2, was attempting to uniformly provide salary increases and a salary plan for unclassified employees whose salaries were not subject to Governor ...determination. The unclassified employees of the Board of Nursing (Executive Director and Assistant Executive Director) or of the Attorney General (Research Assistants) which comes within these parameters are 'unclassified employees' whose salaries are intended to be set according to Schedule I in Part D, §3, and subject to the other rules

3. Research assistants within the Department of the Attorney General and Deputy Attorneys General are unclassified employees. See 5 M.R.S.A. §711(2)(A)(1)(a).

4. We also interpreted the language of 32 M.R.S.A. §2153 (11) which empowers the State Board of Nursing to "fix" the compensation of its executive director and assistant executive director.

relating to establishment of salaries and increases in salaries.

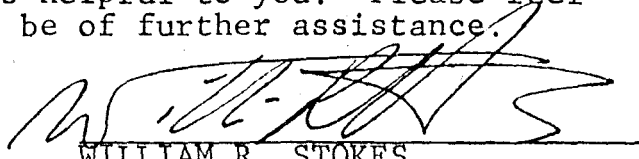
Part D, §2, authorizes and requires the assignment of unclassified employees whose salaries are not subject to Governor ...determination to a step in a salary range in Schedule I ... This provision basically requires that the unclassified employees discussed above be assigned to a salary range as determined by the Hay Study or the [Temporary] Compensation Review Board. 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 added).

In view of our opinion of September 21, 1976, you have asked whether 5 M.R.S.A. §196, which now provides that "[n]otwithstanding any other provisions of law, the compensation of research assistants and deputy attorneys general shall be fixed by the Attorney General," was intended to exclude research assistants and deputy attorneys general from the operation of Chapter 147, Part D, P. & S. L. 1975. For the reasons discussed below, we believe the Legislature did intend such a result.

It is a fundamental principle of statutory construction that a law is to be interpreted in accordance with the plain meaning of the language which the Legislature used. See, e.g., Vance v. Speakman, Me., 409 A.2d 1307, 1310 (1979); State v. Fleming, Me., 377 A.2d 448 (1978). See also 1 M.R.S.A. §72(3) (1979). In our view, the phrase "[n]otwithstanding any other provisions of law" has a plain and unambiguous meaning and was intended by the Legislature to indicate that the Attorney General's authority to fix the compensation of research assistants and deputy attorneys general is not limited by any other statutory enactment, including P. & S. L. 1975, c. 147, Part D. In short, we believe the phrase "[n]otwithstanding any other provisions of law" means exactly what it says.

To conclude otherwise would require us to treat the language "[n]otwithstanding any other provisions of law" as mere surplusage, a result disfavored by the courts. See, e.g., State v. Tullo, Me., 366 A.2d 843 (1975); Finks v. Maine State Highway Commission, Me., 328 A.2d 791 (1974); National Newart and Essex Bank v. Hart, Me., 309 A.2d 512 (1973). Had the Legislature intended the Attorney General's compensation-fixing authority to be subject to the provisions of Chapter 147, Part D, it could simply have stated that "the compensation of research assistants and deputy attorneys general shall be fixed by the Attorney General." The fact that the Legislature gave the Attorney General the authority to fix such compensation "[n]otwithstanding any other provisions of law" strongly indicates that it intended that no provisions of law, including Chapter 147, Part D, would limit that authority in any way.

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

A handwritten signature in dark ink, appearing to read 'W. R. Stokes', written over a horizontal line.

WILLIAM R. STOKES
Assistant Attorney General