

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

August 24, 1981

Mr. Donald A. Brown
State Controller
Bureau of Accounts and Control
State Office Building
Augusta, Maine 04333

Dear Mr. Brown:

This will respond to your Inter-Departmental Memorandum of July 23, 1981 in which you seek our opinion as to whether the Chairman and the Members of the Public Utilities Commission, as well as certain employees of the Commission, are entitled to receive the benefits authorized by the Legislature by virtue of Chapter 453 of the Public Laws of 1981.

On June 11, 1981, Chapter 452 of the Public Laws of 1981, being "An Act Relating to the Public Utilities Commission Officials' and Employees' Compensation," was enacted into law. Chapter 452, P.L. 1981 will become effective on September 18, 1981. See Me. Const. Art. IV, Pt. 3, §16. Section 3 of Chapter 452 repeals and replaces 2 M.R.S.A. §6-A¹ and provides that: (1) the salary of the Chairman of the Public Utilities Commission shall be at range 91, step B; (2) the salary of the members of the Public Utilities Commission shall be at range 89, step A, and; (3) the salaries of the general counsel, the director of finance and the secretary of the Public Utilities Commission shall be at range 88, step C. Section 3 of Chapter 452 further provides that:

"Notwithstanding any other provision of law, the pay ranges and steps for the state officials listed in this section shall not be changed without legislative approval."

1. For a discussion of the history of 2 M.R.S.A. §6-A, as enacted by P.L. 1977, c.697, see Op. Atty. Gen., September 10, 1980.

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On June 11, 1981, Chapter 453 of the Public Laws of 1981 was enacted into law as emergency legislation and became effective immediately. The purpose of Chapter 453 was to fund and implement the collective bargaining agreements between the State of Maine and Council 74, American Federation of State, County and Municipal Employees for the Institutional Services Bargaining Unit and the Maine State Troopers Association for the State Police Bargaining Unit. See P.L. 1981, c.453, §§4, 5. Additionally, Chapter 453 authorizes appropriations to implement salary increases and benefits for certain other state employees excluded from collective bargaining. See P.L. 1981, c.453, §6. In particular, section 12 of Chapter 453 provides various benefits to "confidential employees" who are defined "as those within the Executive Branch, including probationary employees, who are excluded from bargaining units pursuant to the Revised Statutes, Title 26, section 979-A, subsection 6, paragraphs B, C, D, I and J and whose salaries are not subject to adjustment or approval by the Governor."²

With respect to the Chairman and Members of the Public Utilities Commission, it seems apparent to us that these state officials are "confidential employees" within the meaning of Chapter 453, §12 and are, therefore, entitled to receive the benefits of that legislation. 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). Furthermore, under the current version of 2 M.R.S.A. §6-A (as well as under the version of section 6-A to become effective September 18, 1981), the salaries of the Chairman and Members of the Public Utilities Commission "are not subject to adjustment or approval by the Governor." See P.L. 1981, c.453, §12. See also Op. Atty.Gen., September 10, 1980. Consequently, the Chairman and Members of the Public Utilities Commission satisfy all of the requirements of "confidential employees" as defined in section 12 of Chapter 453 of the Public Laws of 1981.

With respect to the general counsel, the director of finance and the secretary of the Public Utilities Commission, our analysis is somewhat different. Nevertheless, we conclude that these unclassified state employees are entitled to the benefits provided

2. Paragraphs I and J have been added to 26 M.R.S.A. §979-A(6) by virtue of Chapter 381 of the Public Laws of 1981, effective September 18, 1981.

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in Chapter 453 if the Governor, in his discretion, chooses to grant them to these employees. Under current law, the salaries of the general counsel, the director of finance and the secretary of the Public Utilities Commission are subject to adjustment by the Governor. See 2 M.R.S.A. §6(5) and (7)(1980-1981 Supp.). Consequently, these individuals are not "confidential employees" as defined in Chapter 453, §12. However, section 13 of Chapter 453 permits the Governor to "grant similar and equitable treatment consistent with this Act" to "those unclassified employees whose salaries are subject to the Governor's adjustment or approval...." Since the general counsel, the director of finance and the secretary of the Public Utilities Commission fall within the scope of Chapter 453, §13, the Governor "may grant similar and equitable treatment" to these employees.

Having determined that the state officials in question are included in the plain language of §§12 and 13 of Chapter 453, we see no reason to conclude that the enactment of Chapter 452 bars these officials from the benefits of Chapter 453. It is well settled that when two different enactments deal with the same subject matter, effect should be given to both whenever possible. Furthermore, every effort should be made to interpret the enactments in a consistent fashion. See, e.g., In Re Belgrade Shores, Inc., Me., 359 A.2d 39 (1976). Applying these principles to the problem at hand, there is no inherent conflict in a literal implementation of both Chapters 452 and 453. Under this approach, effective at the start of the pay week closest to July 1, 1981, the officials in question became entitled to the appropriate salary increases and/or other benefits authorized by P.L. 1981, c.453.³

3. The conclusion that Chapter 453 was intended to apply to these officials is supported by the legislative history of Chapter 452, P.L. 1981. Chapter 452 originated as L.D. 657 (H.P. 577) and was the subject of several amendments. See H-317, H-351, H-383, H-404. However, the version of L.D. 657 which was eventually enacted as Chapter 452 was the product of Committee on Conference Amendment "A" (S-312) to the bill. The Statement of Fact accompanying the Conference Committee Amendment strongly supports the conclusion that in enacting Chapter 452 the Legislature intended that the officials and employees of the Public Utilities Commission covered by the Act would also receive any cost-of-living salary increases provided to other state employees.

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Effective September 18, 1981, they should be placed in the ranges and steps specified in P.L. 1981, c.452, §3, and thus, their salaries should be readjusted at that time to conform to their new pay grades.

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

Sincerely,

Stephen L. Diamond
STEPHEN L. DIAMOND
Deputy Attorney General

SLD:sm

cc: Rodney L. Scribner, Commission, Finance and Administration
George Viles, Department of Personnel
Charles Roundy, Secretary, Public Utilities Commission