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JAMES E. TIERNEY
ATTORNEY GENERAL



81-74

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

September 10, 1981

Honorable Thomas R. Perkins
15 Main Street
Blue Hill, ME. 04614

Dear Senator Perkins:

This will respond to certain questions you have raised regarding the salaries of the Sheriff, Register of Probate, Register of Deeds and Judge of Probate of Hancock County.

By way of background, you have provided me with the following information. Through the enactment of P.L. 1981, c. 465, the 110th Legislature amended 30 M.R.S.A. § 2 so as to increase the salaries of certain positions in county government. Although it was intended that this legislation grant raises to the above-referenced Hancock County officials, the language necessary to make this change was inadvertently omitted from Chapter 465. The 110th Legislature also enacted Chapter 19 of the Resolves of 1981, which established the Hancock County budget for 1981. While Chapter 19 makes no specific reference to the salaries of the officials in question, you advise me that the applicable "personal services" lines were computed so as to reflect the increases which it was thought Chapter 465 would grant to them. In short, the Hancock County budget authorizes sufficient funds to cover the increases omitted from Chapter 465.

Your principal question is whether the Hancock County Commissioners may give the Sheriff, Register of Probate, Register of Deeds and Judge of Probate the raises "intended" for them, with the understanding that this action would be ratified by subsequent legislation. Put succinctly, we believe that the payment of the raises under these circumstances would be unlawful. The salaries of the officials in question are clearly specified in 30 M.R.S.A. § 2(1)(E)(3)-(6), and the commissioners have no choice but to comply with that statute.

Your second inquiry concerns the manner in which this problem might be rectified. In our view, the simplest solution would be for the Legislature to further amend 30 M.R.S.A. § 2 to provide for the previously omitted salary increases. As was the case with Chapter 465, these amendments could be enacted as emergency legislation and could be made retroactive to January 1, 1981. We would note that since our suggested remedy would not compensate the officials for any interest they might lose in receiving delayed raises, prompt action becomes important if your objective is to insure that these officials are treated similarly to those in other counties whose salaries were increased by Chapter 465. As is probably apparent, the longer the delay is in enacting these amendments, the greater the loss of interest will be.^{1/}

I hope this information is helpful.

Sincerely,

Stephen L. Diamond
STEPHEN L. DIAMOND
Deputy Attorney General

SLD:mfe

^{1/} It may be relevant to note that Chapter 465 took effect on June 16, 1981. We may thus assume that the county officials covered by that act probably received their increases, including their retroactive payments, sometime in late June or early July. Accordingly, as of this writing, relatively prompt action by the Legislature could still avoid any substantial loss of interest by the Hancock County officials.