

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

November 23, 1982

David W. Bustin, Commissioner
Department of Personnel
State House Station #4
Augusta, Maine 04333

G. William Buker,
State Budget Officer
Bureau of the Budget
Department of Finance and
Administration
State House Station #58
Augusta, Maine 04333

Dear Messrs. Bustin and Buker:

You have requested an opinion from this Office on the question of whether certain federally-funded positions in the state vocational-technical institutes (VTIs) should be considered classified or unclassified for purposes of the Maine Personnel Law, 5 M.R.S.A. § 551 et seq. The specific problem presented is whether persons appointed to positions which have been denominated "Financial Aid Coordinator" and "Adult Education Coordinator" should be considered as unclassified under the Personnel Law. We conclude that these positions are unclassified.

The relevant facts, as we understand them, relating to the creation of the positions in question, are as follows: Over the course of recent decades, the Maine Department of Educational and Cultural Services received substantial federal funds which, in part, have been used for the staffing of VTIs. Whenever the Department wishes to engage an additional employee for such institutions with such funds, it requests permission to do so from the Department of Personnel. Once that Department ascertains from the Bureau of the Budget of the

Department of Finance and Administration that the federal funds in question do, in fact, exist, it confers with the Department of Educational and Cultural Services as to the formal denomination of the new position. In the case at hand, this conferral has resulted in the application to three new positions of the titles "Financial Aid Coordinator" and "Adult Education Coordinator," titles which have been in use in the VTI system for over ten years.

The Maine Personnel Law divides all^{1/} positions of employment in state government into two categories: classified and unclassified. Section 711 of that law lists, by general type, all unclassified positions. Any position not listed in Section 711 is made part of the classified service, and is, therefore, subject to the manifold requirements of the Personnel Law. 5 M.R.S.A. §§ 552(3), 671. Thus, in order for the positions of Financial Aid Coordinator and Adult Education Coordinator to be considered unclassified, they must be found to fall within the purview of Section 711.

The language of Section 711 relevant to this question is as follows:

The unclassified service comprises positions held by officers and employees as follows:

1. Officers and employees. Certain elective legislative, judicial and other officers and employers [sic] as follows:

H. Officers and employees of the unorganized territory school system and the teachers and principals of the school systems in state vocational schools and state institutions.

The language adding "teachers and principals" of the VTIs to the unclassified service became part of Section 711 in 1963, P.L. 1963, c. 140, with the evident purpose of exempting from the classified service all of the VTIs' professional staff, which then comprised only the two named positions. This language was not amended when the titles of "principal" and "dean" of the VTIs were administratively changed to "Director" and "Assistant Director" in 1966. See memo from Philip A. Annas, Executive Director, Division of Institutions and John A.

^{1/} No exception is made for positions created with federal funds, rather than with appropriations from the Maine Legislature. Indeed, we are advised that federal grant programs usually require that use of such funds must comply with state personnel laws.

Snell, Chief, Bureau of Vocational Education, to Commissioner William T. Logan, Jr. and Members of the State Board of Education, January 3, 1966. In addition, since 1963, a number of administrative positions, including "Adult Education Coordinators" and "Financial Aid Coordinators," have been added at the VTIs. All of these positions have continued to be viewed as falling within Section 711.

In our opinion, in view of this long-standing administrative practice, and in view of the evident legislative purpose of including the entire administrative structure of the VTIs within the unclassified service through the use of the terms "teachers and principals" in Section 711(1)(H), the positions of Adult Education Coordinator and Financial Aid Coordinator should continue to be viewed as unclassified. Any other reading of Section 711 would, in our view, impose upon the terms "teachers and principals" an unduly narrow interpretation. These terms were clearly not intended to refer only to positions bearing those words in their formal titles, but were employed to indicate, in a general way, that school administrators were to be unclassified.^{2/}

This conclusion is buttressed by the treatment given school administrative personnel under the University of Maine Labor Relations Act (UMLRA), 26 M.R.S.A. § 1021 et seq. This statute was enacted in 1975, P.L. 1975, c. 603, with the objective of regulating collective bargaining at various state educational institutions, including VTIs. In its original form, the Act

^{2/} We do not think that the language of Section 4 of Part A of the 1982 Supplemental Appropriations Act, P.L. 1981, c. 702, to which you have drawn our attention, require a different result. That language provides as follows:

Permanent positions for which funds are appropriated or allocated shall be classified positions, unless specifically designated otherwise by the Legislature.

[emphasis added.]

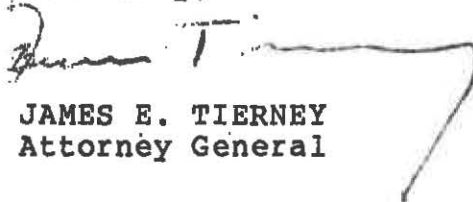
First of all, we believe that for the reasons set forth in the body of this opinion, the provisions of 5 M.R.S.A. § 711(1)(H) placing "teachers and principals" of the VTIs in the unclassified service satisfies the requirement of "specific designation" contained in the above quoted statute. And beyond this, we are also doubtful that this latter provision, which as indicated was part of an appropriations act, could be read to apply to positions which have not been created or funded by the Legislature at all.

distinguished between classified and unclassified employees of the VTIs, establishing separate bargaining units for "faculty and instructors," "administrative staff," and "classified employees." Then, in 1978, the Legislature deleted the latter category, P.L. 1977, c. 641, and thereby rendered all classified employees subject to collective bargaining under another statute, the State Employees Labor Relations Act (SELRA), 26 M.R.S.A. § 979 et seq. Thus, for collective bargaining purposes, the Legislature has clearly distinguished between "administrative" and "classified" employees of the VTIs.

As a result of this distinction, a reading of Section 711 of the Personnel Law to exclude administrative personnel of the VTIs from the unclassified service would create an anomalous situation, since employees who would not be deemed classified for personnel purposes would be treated differently for purposes of collective bargaining. We do not think the Legislature would have intended such a result. Consequently, for this additional reason, we believe Section 711 should be read to include administrative personnel of the VTIs.

We hope this information is helpful. If you have any further questions, please do not hesitate to contact this office.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/d

cc: Harold Reynolds, Jr., Commissioner
Department of Educational and Cultural Services