

MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



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

January 7, 1985

Honorable Linwood M. Higgins
House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Representative Higgins:

In response to your letter of January 3, I am writing to advise you of the advice which our office rendered orally to Representative John N. Diamond, the Chairman of the Legislative Council, on Wednesday, January 2, 1985, concerning its authority to increase the salaries of the Secretary of State and the State Treasurer. For the reasons which follow, we advised the Council that it was within their discretion to increase the salaries of the two constitutional officers in question by one step for each year in which they had been in office.^{1/}

As you know, the power of the Legislative Council to establish the salaries of the constitutional officers was established at the Third Special Session of the 111th Legislature this past September. At that time, the Legislature enacted 3 M.R.S.A. § 162-B, which provided generally that the salary of the Secretary of State and the Treasurer of the State shall be within salary Range 87, but shall not exceed Step G in that range. In addition, the section provided that at the time of initial appointment, the salary of these officers shall be

^{1/} Needless to say, our office has in no way suggested that the Council actually exercise its discretion in granting salary increases to the two officers, nor has it given any support to such action.

set at the first step of that range, but that "The Legislative Council may adjust the salary of each official by one step for each year of continuous service after the initial appointment to office."

The bill enacting Section 162-B also contained a section fixing its effective date. P.L. 1983, ch. 862, § 6. This section specified that Section 162-B should take effect on December 1, 1984, and that the officials occupying the positions of Secretary of State and Treasurer of State on that date "shall be placed . . . in their respective statutory pay ranges . . . at the appropriate step for their initial appointment." Thus, on December 1, 1984, the incumbent Secretary of State and Treasurer of State were entitled to receive the salary established at Range 87, Step A.

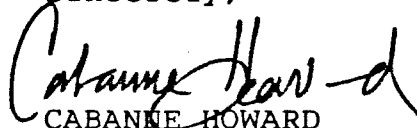
As you also are aware, the two incumbents in these positions were subsequently reelected by the 112th Legislature on December 5, 1984. Accordingly, under the provisions of Section 162-B, the Legislative Council was empowered to adjust their salaries by one step for each year of continuous service, so long as such adjustments did not exceed Step G. You indicate in your letter that at the Council meeting of January 2, 1985, the Council did adjust the salaries of the two officers to Steps F and D, respectively. This action would appear to have been clearly within the statutory discretion of the Council.

In conveying the foregoing to the Council, this office was aware of the statements made on the floor of the House of Representatives by Representative Hobbins and yourself on September 7, 1984 at the time that the bill containing the provisions concerning the salaries of the constitutional officers was under consideration. At that time, you first indicated that it was your understanding that the Secretary of State and Treasurer "will be included in Step A, no matter who these people are, even if they are the existing constitutional officers," a statement which is consistent with the text of the bill, set forth above, which automatically placed those officers at that pay level on December 1, 1984. Legis. Rec. 33 (1984). You then indicated that you understood that "the sum and substance of it is that incumbency or years of service is not going to necessitate the Legislative Council raising that particular constitutional officer above Step A in that Range." Id. (emphasis added). This statement is also consistent with the text of the new statute as set forth above. The statute does not say that the Legislative Council is required to grant any increases to the incumbent officers, it merely provides that they have the discretion to do so. Thus, even if the

remarks of an individual Legislator as to his understanding of a particular bill could be permitted to vary the meaning of the plain language of the bill itself, a proposition which is by no means certain, it was our opinion that your remarks on September 7 were not inconsistent with the text of the statute as we read it.

I hope the foregoing responds to your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



CABANNE HOWARD

Assistant Attorney General

CH/ec

cc: Rep. John N. Diamond
Legislative Council