

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL

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

August 10, 1989

Representative Donald V. Carter
House Chairman, Joint Standing
Committee on Appropriations
State House Station #2
Augusta, Maine 04333

Dear Representative Carter:

You have asked whether the 114th Maine Legislature may constitutionally pass a statute appropriating monies for a three-year period to fund a contract entered into by the Executive Branch with various bargaining agents for state employees. For the reasons which follow, it is the Opinion of this Department that while the Legislature may pass a statute funding such an agreement for the two-year life of the Legislature, such a statute would not be binding on the 115th Legislature with regard to the third year of the agreement. That Legislature would therefore have to enact additional legislation to fund the third year of the contract.

The facts underlying your request, as this Department understands them, are as follows. Earlier this year, the Bureau of Employee Relations of the Department of Administration, acting under the authority of the Governor, negotiated a labor agreement with various bargaining agents for state employee bargaining units, pursuant to the State Employees Labor Relations Act, 26 M.R.S.A. § 979, et seq. As authorized by Section 979-D(1)(C) of the Act, the agreement covers a period of three years. The agreement must now be presented to the Legislature for funding. You have asked whether the Legislature may enact legislation binding upon the State to fund the agreement for its entire three-year duration.

It is a fundamental principle of constitutional law in Maine, as well as elsewhere, that one Legislature, by its

actions, cannot bind future Legislatures. Edgerly v. Honeywell Information Services, Inc., 377 A.2d 104 (Me. 1977); Maine State Housing Authority v. Depositors Trust Co., 278 A.2d 699, 707-08 (Me. 1971); Opinion of the Justices, 146 Me. 183 (1951). In particular, with regard to making appropriations beyond the two-year life of a particular Legislature, the Justices of the Maine Supreme Judicial Court have stated:

One Legislature cannot obligate succeeding Legislatures to make appropriations. One Legislature may, within constitutional limitations, impose a contractual obligation upon the State which it is the duty of the State to discharge, but one Legislature cannot impose a legal obligation to appropriate money upon succeeding Legislatures. Opinion of the Justices, 146 Me. at 189-190.

Moreover, the Justices observed, any attempt to create obligations which would be binding upon succeeding Legislatures not only violates the prohibition against one Legislature binding the next, but would also violate the provisions of Article IX, Section 14 of the Maine Constitution, which forbids the creation of debts or liabilities in excess of \$2,000,000 without a bond issue.

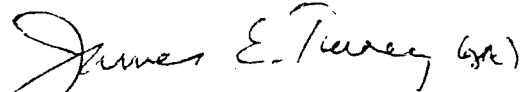
Applying these principles to the problem which you present, it is clear that the Legislature may appropriate money funding the labor relations agreement during the two fiscal years (1989-90 and 1990-91) which are within its financial control. The operation of the principles just set forth, however, would prevent the Legislature from enacting binding legislation for the 1991-92 fiscal year. It is the understanding of this Department, however, that the Executive Branch is aware of these constitutional limitations and that therefore the legislation to be submitted by it in August to fund the contract will include language expressly recognizing the need to introduce legislation in the 115th Legislature to fund the third year of the contract. This Department further understands that the public employee unions are aware that the third year of the contract tentatively agreed to is not enforceable or binding in any way until funded by the next Legislature.

Needless to say, this Department expresses no opinion on the wisdom of a three-year contract or about the specifics of this contract. As to the impact which the proposed agreement may have on positions funded by dedicated state revenues or

federal funds, this Department also expresses no view, except to observe that it is our understanding that the proposed increases would apply to such positions. These questions, however, are better addressed to the Executive Branch to determine its intentions in negotiating the agreements.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "James E. Tierney" with a stylized flourish at the end.

JAMES E. TIERNEY
Attorney General

JET/ec

cc: Honorable John R. McKernan, Governor
Honorable Charles P. Pray, President of the Senate
Honorable John L. Martin, Speaker of the House
Honorable Michael D. Pearson, Senate Chairman,
Joint Standing Committee on Appropriations