

MAINE STATE LEGISLATURE

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

September 21, 1990

Honorable Beverly M. Bustin
Chair, Joint Standing Committee on
Audit and Program Review
State House Station #5
Augusta, ME 04333

Dear Senator Bustin:

I am writing in response to your inquiry whether legal effect should be given to an amendment to the statutes relating to the Department of Administration enacted by the Legislature at its 1990 Session removing the position of Assistant to the Deputy Commissioner of Administration for Information Services from the unclassified service, in view of the Legislature's failure to simultaneously remove that position from another statute which includes the position within a list of unclassified positions. For the reasons which follow, it is the opinion of this Department that the position should be regarded as classified.

At its Second Regular Session, the 114th Legislature enacted that Chapter 857, "AN ACT Relating to Periodic Justification of Departments and Agencies of State Government Under the Maine Sunset Act," a statute which made numerous changes to the laws governing certain state agencies which were receiving periodic review by the Legislature. One of these agencies was the Department of Administration, and among the changes to that Department's statutes was section 25 of the Act which amended 5 M.R.S.A. § 1885(2) by repealing a clause which specified "that any assistant to the deputy commissioner shall be in the unclassified service." The Statement of Fact accompanying the bill which resulted in this enactment provided that the amendment in question "takes the position of Assistant to the Deputy Commissioner of the Office of Information Services out of the unclassified service." L.D. 2427, Statement of Fact, § 27 (114th Legis. 1990). Thus, it is clear that, through this enactment, the Legislature intended that the

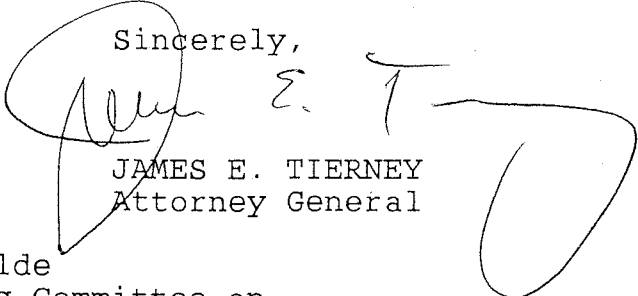
office in question be appointed in accordance with the civil service law.

The problem which your question presents derives from the fact that in another part of the statutes, the Legislature has set forth a list of positions in state government, denominated "major policy-influencing positions," which are made part of the unclassified service. 5 M.R.S.A. § 931 et seq. In the section of those statutes relating to the Department of Administration, the position of "Assistant Deputy Commissioners" appears in the list of major policy-influencing positions. 5 M.R.S.A. § 947-A(1)(F). In Chapter 857, the Legislature failed to amend this section to exclude from it the position of Assistant to the Deputy Commissioner of the Office of Information Services. Thus, you inquire whether its failure to do so would negate the effect of its amendment to Section 1885(2).

In the opinion of this Department, that failure would not negate the effect of the amendment to Section 1885. The problem of an inconsistency between a newly-enacted statute and prior statutes is a common one in the field of statutory interpretation, and is squarely resolved by the principle that "If there is an irreconcilable conflict between the new provision and the prior statutes, the new provision will control as it is the later expression of the legislature." 2A Sutherland, Statutory Construction, § 51.02 (4th ed. 1984). Thus, the fact that the Legislature has failed to bring other statutes into conformity with a new enactment will not destroy the effectiveness of the new enactment. Indeed, any other result would render nugatory the Legislature's clear intention, in this case, to remove a particular position from the unclassified service. This Department would suggest, however, that an appropriate amendment be introduced to Section 947-A(1)(F) at the next session of the Legislature, perhaps in an errors bill, to eliminate the inconsistency. Nonetheless, the existence of that inconsistency does not render ineffective the more recent action of the Legislature.

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

Sincerely,



JAMES E. TIERNEY
Attorney General

JET:sw

cc: Representative Neil Rolde
Chair, Joint Standing Committee on
Audit and Program Review
Nancy J. Kenniston
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