MAINE STATE LEGISLATURE

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April 2, 1993

Senator James R. Handy
Representative Richard P. Ruhlin
Chairs, Joint Standing Committee on Labor
State House Station #115
Augusta, ME 04333

Dear Senator Handy and Representative Ruhlin:

I am writing in response to your inquiry concerning whether certain provisions of two bills pending before your Committee constitute "mandates" within the meaning of Article IX, Section 21 of the Maine Constitution, requiring that such legislation be passed by two-thirds of all members elected to each House of the Legislature, or, failing that, that the Legislature provide 90% of any increase in local expenditures necessitated by the legislation. For the reasons which follow, it is the Opinion of this Department that the provisions of the bills in question, to the extent that they would have a financial impact on local units of government at all, do not constitute "mandates" because they relate to all employers in the State generally, and not to municipal employers in particular.

Article IX, Section 21 provides in its entirety as follows:

> For the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of

> government. Legislation implementing this section or requiring a specific expenditure as an exception to this requirement may be enacted upon the votes of 2/3 of all members elected to each House. This section must be liberally construed.

The bills with which your question deals are Legislative Document 409, "AN ACT Regarding Family Leave," and Legislative Document 309 "AN ACT to Require Written Reason for Discharge, Demotion or Discipline." The first bill would amend the provisions of current law relating to family medical leave so that coverage is expanded from those employers with 25 or more employees at one work site to employers with 25 or more employees at all work sites in the State. The second bill would require all employers to provide employees with written reasons for their discharge, demotion or discipline, in addition to which you have advised this Department that your Committee has approved an amendment to this bill which would limit this requirement only to circumstances in which the employee made a written request for a statement of reasons. The question which you pose is whether the application of either of these bills to the municipalities of the State would constitute a "mandate" within the meaning of the constitutional amendment.

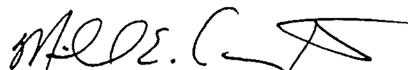
In the view of this Department, neither bill falls within the scope of the amendment. In the first place, the plain language of the amendment appears to contemplate that only legislation expressly requiring local units of government to expand their activities so as to require additional expenditures be covered. Moreover, this conclusion is supported by the legislative history of the amendment. As indicated in prior Opinions of this Department, copies of which are attached, the text of the amendment as ultimately enacted was accomplished through the enactment of a House amendment to a committee amendment which occurred without debate in either House. House Amend. D to Comm. Amend. B to L.D. 66, No. 1237 (115th Legis. 1992). The original committee amendment, however, contained a provision that "the State is not required to fund any State mandate that . . . that pertains to wages, salaries, or benefits for state and local public employees." Comm. Amend. B to L.D. 66, S-527 (115th Legis. 1992). As this Department has earlier indicated, there was no indication that the Legislature intended a different scope for the House amendment to the committee amendment than for committee amendment itself. Thus, it is fair to assume that, at least with regard to the legislation concerning "wages, salaries or benefits," the Legislature did not intend to limit itself with regard to the passage of legislation in the future relating to

such matters even if "local units of government" of the State were affected.

That being the case, it does not appear that the provisions of either bill which your Committee is considering would be affected by the constitutional amendment. L.D. 406, which expands the coverage of family medical leave entitlement to all employees of an employer with 25 or more employees regardless of whether they are located at one "permanent work site," could have an effect on a particular municipal employer, and could result in additional funds being required to pay for the expanded benefits. Nonetheless, because the bill applies to all employers, and because it relates to a subject matter which the Legislature did not appear to contemplate to be within the scope of the constitutional amendment, the passage of the bill would not violate Article IX, Section 21. Similarly, the provisions of L.D. 309, as amended by your Committee, would not violate the amendment.[1]

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

Sincerely,



MICHAEL E. CARPENTER
Attorney General

MEC:sw

cc: Representative James B. Oliver
Sponsor, Legislative Document 406
Senator Judy A. Paradis
Sponsor, Legislative Document 309

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[1] In addition, it does not appear that the imposition of the requirement that an employer provide written reasons for discharge, demotion or discipline, upon the request of an employee, would have a financial effect of the type contemplated by the constitutional amendment upon an employer, including a municipal employer, and would not violate the amendment for this additional reason.