

December 10, 2001

Donald S. Hill, Commissioner
Department of Administrative Services
State House Annex, Room 120
25 Capitol Street
Concord, New Hampshire 03301

Dear Commissioner Hill:

By letter dated October 17, 2001, you requested a legal opinion on the proper interpretation and implementation of provisions of Chapter 158, Laws 2001, concerning the compensation for certain unclassified state employees. Chapter 158 establishes a new, higher salary schedule for unclassified employees, and, in most cases, assigns an employee to a salary range that is higher than the employee's current salary. Your specific questions and our corresponding analyses and legal opinions are set forth below.

Your first question is whether an unclassified employee's salary should be maintained at its present level, or be reduced to the maximum of the new salary range, when an employee's present salary exceeds the maximum of the new salary range to which the position is assigned by Chapter 158. Your opinion request states that Chapter 158 was enacted to implement the results of a consultant's compensation study of unclassified state officers that was presented to the Legislature. The fiscal impact analysis included in the consultant's study assumed that employees whose present salaries exceeded the salary ranges that become effective on December 28, 2001 would remain at their current salaries. You also noted that the Legislature enacted Chapter 158 in lieu of a pay raise for unclassified employees.

Donald S. Hill, Commissioner
Page Two – December 10, 2001

The State's personnel laws do not address the situation where an unclassified executive branch position is reassigned to a new salary range that is lower than the current incumbent's salary. See, generally, Chapter 158, Laws 2001 and RSA Chapter 94 (Compensation of Certain State Officers).¹ Absent statutory authority to the contrary, it is our opinion that the salary of an unclassified employee that exceeds the maximum established by law must ordinarily be reduced to comply with the law. Although state unclassified employees have vested property or contract rights in their positions and terms of appointment, they have no continuing legal entitlement to salaries higher than those periodically authorized by the Legislature. Opinion of the Justices (Furlough), 135 N. H. 625, 637 (1992), citing Dodge v. Board of Education, 302 U. S. 78-79 (1937) [where law merely fixes salaries of officers, no contract is created and compensation named may be altered at will of legislature].

We note, however, that Chapter 158 authorizes the Commissioner of the Department of Administrative Services to:

...submit ... technical corrections to agree with the final report of the consultant, after consultation with the consultant on employee compensation for state officers, to the fiscal committee for approval of the proper placement of the unclassified position in the salary structure for state officers..

158:107, Laws 2001

Read broadly, this section authorizes the Commissioner to seek approval from the Fiscal Committee of alternative placements in the new salary structure for employees whose present salary exceeds the maximum of their newly assigned grades. The alternative placements might be described as special exceptions to the salary range

¹ The law is clearer with respect to classified employees and judges. Ch. 225, Laws 1999 stated "Any classified employee whose position was changed from one salary group to a lower paying salary group, during the 1999 legislative session, shall continue to receive the salary and scheduled raises of the higher paying salary group so long as such employee is employed in such position." 225:43, Laws 1999. A similar provision was not re-enacted in Chapter 158, Laws 2001. But see N. H. Code Admin. R. Per 303.06, which provides that a classified employee's salary shall not be reduced for a period of 2 years following a reclassification of a position to a lower grade. See also, N. H. CONST. Pt. II, art. 59 ["Permanent and honorable salaries shall be established by law, for the justices of the superior court."]

Donald S. Hill, Commissioner
Page Three- December 10, 2001

maximums for individual employees to conform their salaries to the fiscal impact analyses in the consultant's report.

We also note that, subject to certain exceptions, RSA 94:1-a, III authorizes the adjustment of an unclassified official's salary to the next higher step in the range above the salaries of subordinate classified employees. It also authorizes the Governor and Council to increase the maximum of an unclassified position in an amount to provide a differential of up to \$1,000 between the salaries of an unclassified official and subordinate employees.

Your second question relates to how unclassified employees are to be reassigned to the appropriate step in the new salary matrix established by Chapter 158. Your opinion request of October 17, 2001 states that the bill's legislative history included the consultant's recommendation that the State consider moving unclassified employees to the next higher step in the proposed range that will be above their current salaries. You also advised that the appropriation in Chapter 158 was based upon an estimate of fiscal impact by the consultant that assumed that all unclassified employees would be moved to the next higher step in the appropriate salary range. The question presented is whether the Legislature's presumed intent that unclassified employees be placed at the next higher step in the appropriate salary range is sufficiently expressed so that it can be implemented.

Chapter 158 revised the salary schedules for both classified and unclassified employees. With respect to classified employees, the Legislature amended RSA 99:3 to authorize a salary increase for classified employees by placing them in the next higher labor grade and at the steps justified by their length of service. 158:91, Laws 2001. Chapter 158 also prospectively re-amends RSA 99:3, effective December 27, 2002, to delete the reference to the one time labor grade increase, but to retain the directive to place classified employees "in the corresponding steps in the new salary range as their length of service justifies". 158:92, Laws 2001.

With respect to unclassified employees, Chapter 158 amended RSA 94:1-a, I, by enacting a new matrix of salary grades and ranges and assigning positions to the new salary grades. 158:101, Laws 2001. Chapter 158 amended RSA 94:1-a, II, to provide for salary increases for executive councilors and certain commissioners. 158:89-90, Laws 2001. Chapter 158 did not amend RSA 94:1-a, III, which currently provides, in part:

Officials named in this section [RSA 94:1-a] shall be placed in the corresponding steps in the new salary ranges as their length of service justifies and in accordance with RSA 94:3 [Yearly Service Increases].

RSA 94:1-a, III, (supp).

To determine legislative intent, the first inquiry must focus on the words of the statute, giving them their plain meaning wherever possible. See, e.g., Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270 (1992). A statute's intent and meaning should be determined from "its construction as a whole, not by examining isolated words and phrases." Petition of Jane Doe, 132 N. H. 270, 276 (1989). "... the legislative intent is to be found not in what the legislature might have said, but rather in the meaning of what it did say." Corson v. Brown Products, Inc., 119 N.H. 20, 23 (1979)(citation omitted).

Read as a whole, RSA 94:1-a, I-III, as amended by Chapter 158, establishes a new salary structure for unclassified employees and directs that unclassified employees be placed into the newly established salary matrix "as their length of service justifies". In our opinion, the fact that the appropriation in Chapter 158 is based, in part, on a consultant's report and estimate of fiscal impact that assumed that affected employees would be moved to the next higher step (regardless of their length of service) is insufficient to outweigh the plain language of the statute. Especially in light of the fact that the Legislature specifically approved the placement of classified employees into their new salary structure in Chapter 158 at the steps justified by their length of service, it is reasonable to presume that the Legislature was aware that the provisions of RSA 94:1-a, III would govern the implementation of the newly enacted salary matrix for unclassified employees, unless a different outcome is authorized by law.

As noted above, however, Chapter 158 authorizes the Commissioner of Administrative Services to consult with the consultant and to seek approval by the Fiscal Committee of technical corrections in the placement of positions in the new unclassified salary structure to conform them to the final report of the consultant. 158:107, Laws 2001. In our opinion, section 107 provides a mechanism to effect the apparent intent of the Legislature concerning the placement of unclassified employees into the new salary structure by authorizing the Commissioner to request Fiscal Committee approval that an employee's placement in the new unclassified salary

Donald S. Hill, Commissioner
Page Five- December 10, 2001

range pursuant to RSA 94:1-a, III be modified to conform to the placement specified in the fiscal impact section of the consultant's final report.

We trust that this letter responds fully to your questions. If you would like to discuss this matter further, please do not hesitate to contact our office.

Very truly yours,

Michael J. Walls
Associate Attorney General

MJW/jmw

Opinion .# 01-00003