

# MEMORANDUM

## State of Alaska Department of Law

TO: Judith Porter  
Human Resource Manager  
Department of Law

DATE: March 24, 1999

FILE NO: 663-99-0219

TELEPHONE NO: (907) 465-3600

SUBJECT: Entitlement of Deputy  
Department Head to  
Longevity Pay Increment  
(AS 39.27.022)

FROM: James L. Baldwin  
Assistant Attorney General  
Governmental Affairs Section

You have requested our advice whether a deputy commissioner is eligible to receive a longevity step increase while serving in that position.<sup>1</sup> The answer to your question is “yes.” The answer is based on a contemporaneous construction of the applicable statute which is not contradicted by express provisions set out in law.

After discussions with the division of personnel in the Department of Administration, we learned that deputy department heads in other state departments either have received or are currently receiving longevity pay increments. This practice has been continuing for a substantial period and would probably constitute a long-standing contemporaneous construction. Such a construction would be given some weight in establishing the meaning of the statute.

We also believe that there is adequate support in statute to support the contemporaneous interpretation. A deputy department head is in the partially exempt

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<sup>1</sup> According to AS 39.27.022(a):

Pay increments, computed at the rate of 3.75 per cent of the employee's base salary, shall be provided after an employee has remained in the final step within a given range for two years, provided that the employee has worked continuously for the state for seven years and provided that the current annual rating by the employee's supervisor is designated as “good” or higher.

service. AS 39.25.120(c)(1). The position is appointive and the salary is set at "not less than Step A nor more than Step F, Range 28 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska." AS 39.20.080(b). The pay schedule referred to in sec. 080(b) covers classified and partially exempt employees of the state.

The pay plan for state employees set out in AS 39.27 expressly applies only to classified and partially exempt employees.<sup>2</sup> The statute establishing the longevity pay increment is a part of the chapter of the personnel code applicable to the pay plan for classified and partially exempt employees. AS 39.27.022. This statute provides that a longevity pay increment is considered an amendment to the salary schedule. AS 39.27.022(c).

The authorizing statute is ambiguous in the manner in which it describes the persons entitled to the increase. In AS 39.27.022(a) it is provided that "the employee's base salary" is subject to the adjustment. However, the term "employee" is not defined. There is some intrinsic evidence of the meaning of this term found in subsection (d), which provides that a longevity adjustment is applicable to legislative employees in the exempt service only if a written policy is adopted by the legislature. From this it is unclear whether exempt employees were intended to be covered. It is possible to infer that only the exempt employees mentioned must obtain special permission to become eligible for a longevity pay increment while the rest are eligible without further action. Conversely, it is reasonable to imply that all partially exempt employees are covered because reference is made to the salary schedule applicable to them and no one in that class was singled out for special permission as was done for exempt employees of the legislature.<sup>3</sup>

From the foregoing, we conclude that the term "employee" referred to in AS 39.27.022 includes a deputy department head in the partially exempt service.

We hope that this memorandum adequately answers your question.

JLB:jn

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<sup>2</sup> The pay plan for exempt employees is typically set out as a temporary act. *See* sec. 2, ch. 46 SLA 1990 and sec. 11, ch. 19 SLA 1991.

<sup>3</sup> Our advice was requested only as to the eligibility of partially exempt deputy department heads. We express no opinion as to the eligibility of exempt employees.