

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

One Hundred and First Legislature

OF THE

STATE OF MAINE

Published by the Director of Legislative Research in accordance with the Revised Statutes of 1954, Chapter 10, Section 27, Subsection VI.

The Knowlton and McLeary Company
Farmington, Maine
1963

PUBLIC LAWS
OF THE
STATE OF MAINE

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VII. **Holder to make reports.** The holder of any permit issued under this section shall make a record of all sales and purchases of shellfish covered by this section on forms supplied by the department and shall file those records with the department weekly. The records and reports must contain the following information:

A. The location of the flats where the shellfish are dug and the amounts dug in each location.

B. The amounts of shellfish sold and where sold.'

Sec. 9. Effective date. This act shall take effect January 1, 1964.

Effective January 1, 1964

Chapter 412

AN ACT Combining the Offices of the Administrative Hearing Officer and the Hearing Examiner for the Liquor Commission, and Revising the Administrative Code.

Emergency preamble. Whereas, Committee Amendment "A" consolidates the duties of the Administrative Hearing Officer under the Administrative Code, and the Office of Hearing Examiner for the State Liquor Commission into one position designated "Administrative Hearing Commissioner"; and

Whereas, there is a vacancy in the office of Administrative Hearing Officer at the present time; and

Whereas, the present Hearing Examiner for the State Liquor Commission is to assume the responsibilities of the Administrative Hearing Officer; and

Whereas, the consolidation of the 2 offices will result in a biennial financial saving of approximately \$10,000; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 20-A, § 1, sub-§ I, amended. Subsection I of section 1 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, and as amended, is further amended by inserting after the paragraph entitled "Maine Mining Bureau" the following paragraph:

'State Liquor Commission.'

Sec. 2. R. S., c. 20-A, § 1, sub-§ I, ¶ C, repealed and replaced. Paragraph C of subsection I of section 1 of chapter 20-A of the Revised Statutes, as en-

acted by section 1 of chapter 394 of the public laws of 1961, is repealed and the following enacted in place thereof:

'C. All establishments licensed under chapter 25, section 162;'

Sec. 3. R. S., c. 20-A, § 1, sub-§ II, amended. The last sentence of subsection II of section 1 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is repealed, as follows:

~~'It does not include informal meetings held by consent of the agency and all interested parties'~~

Sec. 4. R. S., c. 20-A, § 1, sub-§ III, amended. Subsection III of section 1 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is amended to read as follows:

III. Rule. "Rule," as applied to a rule adopted, amended or repealed by an agency, includes every regulation, standard ~~or~~, statement of policy or interpretation of general application and future effect, ~~including the amendment or repeal thereof, adopted by an agency, whether with or without private hearing, to implement or make~~ which implements or makes specific the law enforced or administered by ~~it~~ the agency or ~~to govern~~ governs its organization or procedure ~~but~~. It does not include regulations concerning only the internal management of the agency and not directly affecting the rights or procedures available to the public, and does not include rules already in effect ~~when this chapter becomes effective on September 16, 1961.~~

Sec. 5. R. S., c. 20-A, § 1, sub-§ IV, additional. Section 1 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is amended by adding a new subsection IV, to read as follows:

IV. Hearing Commissioner. "Hearing Commissioner" means the Administrative Hearing Commissioner appointed under section 6.'

Sec. 6. R. S., c. 20-A, § 2, amended. Section 2 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is amended to read as follows:

Sec. 2. Adoption of rules. In addition to other rule-making requirements imposed by law:

I. Adopt rules. Each agency ~~shall promulgate rules governing the formal and informal procedures prescribed or authorized by this chapter. Such rules shall include~~ may adopt, amend and repeal rules of practice before the agency it, together with forms and instructions.

II. Descriptive statements. To assist interested persons dealing with it, each agency shall so far as practicable supplement its rules with descriptive statements of its procedures.

III. Notice of action. Prior to the adoption, amendment or repeal of any rule, ~~or the amendment or repeal thereof~~ the adopting agency shall, so far

as practicable, publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit suggestions orally or in writing.

IV. Form and legality. Prior to the adoption, amendment or repeal of any rule authorized by law, ~~or the amendment or repeal thereof~~ the adopting agency shall submit the ~~proposed rule or amendment proposal~~ to the Attorney General for approval ~~or disapproval~~ as to form and legality.'

Sec. 7. R. S., c. 20-A, § 3, repealed and replaced. Section 3 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is repealed and the following enacted in place thereof:

'**Sec. 3. Filing and taking effect of rules.** Each agency shall file forthwith with the Secretary of State a certified copy of each rule hereafter adopted by it and each rule in effect on September 16, 1961. The Secretary of State shall keep a permanent register of such rules open to public inspection.

I. Approval. The adoption, amendment or repeal of a rule by an agency shall not hereafter become effective until approved as to form and legality by the Attorney General. Approval shall be presumed if the Attorney General takes no action within a period of 30 days after the proposal is submitted.

II. Effective date. Except as set forth in subsection I, the adoption, amendment or repeal of a rule by an agency shall become effective upon filing with the Secretary of State, unless a later date is required by statute or specified in the rule.'

Sec. 8. R. S., c. 20-A, § 4, repealed and replaced. Section 4 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is repealed and the following enacted in place thereof:

'**Sec. 4. Publication of rules.** The Secretary of State shall, as soon as practicable after September 16, 1961, compile, index and publish all rules adopted by each agency and remaining in effect. Compilations shall be supplemented or revised at least once every 2 years.

I. Omissions. The Secretary of State may in his discretion omit from the compilations, rules, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if such rules are made available in printed or processed form on application to the adopting agency, and if the compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

II. Availability. Compilations shall be made available upon request to any state official free of charge, and to other persons at a price fixed by the Secretary of State to cover publication and distribution costs.'

Sec. 9. R. S., c. 20-A, § 5, amended. Section 5 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is amended to read as follows:

Sec. 5. Petition for adoption of rules. Any interested person may petition an agency, **except the Liquor Commission**, requesting the ~~promulgation~~ **adoption**, amendment or repeal of any rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.

Sec. 10. R. S., c. 20-A, §§ 6 and 7, repealed and replaced. Sections 6 and 7 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, are repealed and the following enacted in place thereof:

Sec. 6. Administrative Hearing Office. The Administrative Hearing Office is established and shall be under the supervision of the Administrative Hearing Commissioner.

I. Appointment of Hearing Commissioner. The Hearing Commissioner shall be appointed by the Governor, with the advice and consent of the Council, for a term of 4 years and until his successor is appointed and sworn.

II. Qualification of Hearing Commissioner. The Hearing Commissioner must be an attorney at law admitted to practice before the courts of the State of Maine.

III. Compensation of Hearing Commissioner. The Hearing Commissioner shall receive an annual compensation of \$8,000 and shall be entitled to actual and necessary expenses in the performance of his duties. He may employ necessary clerical assistance.

IV. Hearings. On receipt of a written complaint from an agency, the Hearing Commissioner shall conduct a hearing on the applicable facts and law and governed by this code. The Hearing Commissioner may subpoena and examine witnesses in accordance with this chapter. He shall issue a written decision containing his findings of fact and conclusions of law in each case.

Sec. 7. Petition for declaratory rulings by Hearing Commissioner. On petition of any interested party, the Hearing Commissioner shall issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule of statute enforceable by an agency.

I. Effect of declaratory ruling. A declaratory ruling is binding with respect to the state of facts alleged, unless it is altered or set aside by the court. The ruling is subject to review in the Superior Court in the manner provided for appeal of decisions in contested cases.

II. Form of petition. The Hearing Commissioner shall prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition.

Sec. 11. R. S., c. 20-A, § 8, repealed and replaced. Section 8 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is repealed and the following enacted in place thereof:

'Sec. 8. Procedure in contested cases. In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice.

I. Complaint filed. On commencement of any contested case, a written complaint must be filed with the Hearing Commissioner. A copy of the complaint containing a notice of hearing must be served on the defendant either by personal delivery in hand, by leaving it with a person of suitable age or discretion at his dwelling place or usual place of abode, or by sending it by registered mail to his last known address. The copy of the complaint must be served at least 30 days before the time specified for the hearing, except as provided in section 9. The notice of hearing must inform the defendant of the time and place of hearing, the time limit for filing an answer to the complaint and the consequences of his failure to do so. The complaint must contain a conclusion indicating the violation of a statute or rule and citing the statute or rule violated.

II. Witnesses sworn. At the hearing before any testimony is received, the Hearing Commissioner shall swear in the witnesses.

III. Official record. The Hearing Commissioner shall prepare an official record, including testimony and exhibits, in each contested case, but he need not have a transcript of the testimony prepared unless required for rehearing or appeal. The record of the hearing may be taken by stenographic notes or by mechanical recording.

IV. Disposition by agreement. On approval of the Hearing Commissioner, disposition of any contested case may be made by agreement or consent decree.

V. Rules of procedure. The Hearing Commissioner shall adopt and may amend or repeal rules of procedure in contested cases, including forms which he deems appropriate.'

Sec. 12. R. S., c. 20-A, § 10-A, additional. Chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is amended by adding a new section 10-A, to read as follows:

'Sec. 10-A. Limitation. In any conflict between this chapter and chapter 61, the provisions of chapter 61 shall prevail.'

Sec. 13. R. S., c. 20-A, §§ 9 - 12, repealed and replaced. Sections 9 to 12 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, are repealed and the following enacted in place thereof:

'Sec. 9. Emergency hearing. The Hearing Commissioner may require that a hearing be held in a contested case in less than 30 days after service of the complaint if either party on ex parte motion is able to show that an emergency exists which makes immediate action imperative. The moving party shall give the opposing party reasonable notice of the advanced hearing date.

Sec. 10. Rules of evidence. The rules of evidence as applied in civil cases in the Superior Court shall be observed.

I. Exception. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence which is not ordinarily admissible may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

II. Certain evidence excluded. The Hearing Commissioner shall exclude irrelevant, immaterial and unduly repetitious evidence.

III. Rules of privilege. The Hearing Commissioner shall give effect to rules of privilege recognized by law.

IV. Cross-examination. A party may cross-examine the opposing party, a witness for the opposing party or a hostile witness.

V. Judicial notice. The Hearing Commissioner may take judicial notice of facts so noticed by the Superior Court. Facts judicially noticed shall be stated in the decision issued by the Hearing Commissioner.

Sec. 11. Subpoenas issued by Hearing Commissioner. At the request of a party in a contested case, the Hearing Commissioner shall issue subpoenas for the attendance of witnesses or for the production of documents. He may issue subpoenas on his own motion.

I. Failure to obey subpoenas. A person who fails to obey the subpoena of the Hearing Commissioner may be punished as for contempt of court on application to the Superior Court by the Hearing Commissioner or by the party requesting issuance of the subpoena.

Sec. 12. Decisions. After hearing, on default, or by agreement of the parties, the Hearing Commissioner may suspend, revoke or modify the license of any party properly served with process, or if the applicable law so provides he may order issuance of a license to an applicant according to the terms of the applicable law. He may take any other action with relation to the party which could have been taken before the enactment of this code by the agency involved in the hearing.

I. Decision rendered by Hearing Commissioner. Each decision adverse to a party to the proceeding rendered by the Hearing Commissioner in a contested case must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law. Findings of fact consist of a concise statement of the conclusions on each contested issue of fact.

II. Notification of the decision and order. The Hearing Commissioner shall notify the parties to the proceeding of the result of the hearing by sending a copy of the decision to each party or his attorney of record by registered mail, return receipt requested.

Sec. 14. R. S., c. 20-A, § 13, repealed and replaced. Section 13 of chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is repealed and the following enacted in place thereof:

‘Sec. 13. Appeal. Any party aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to appeal.

I. Procedure. The appeal must be instituted by filing a complaint in the Superior Court at Kennebec County within 30 days after service of the final decision of the Hearing Commissioner. Copies of the complaint must be sent to the Hearing Commissioner and to all other parties of record. No responsive pleading need be filed.

II. Content of complaint. The complaint must contain a concise statement of the grounds upon which the appellant contends he is entitled to relief, and shall demand the relief to which he believes himself entitled.

III. Effect. The filing of the complaint does not stay enforcement of the decision, but the Superior Court may order a stay upon such terms as it deems proper.

IV. Record. Within 30 days after service of the complaint, or within such further time as the court may order, the Hearing Commissioner shall transmit to the Superior Court the original or certified copy of the entire record of the proceeding under review, but by stipulation of all parties to the appeal the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

V. Additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Hearing Commissioner, the court may order the additional evidence to be taken before the Hearing Commissioner upon such conditions as the court deems proper. The Hearing Commissioner may modify his findings and decision by reason of the additional evidence and shall file with the Superior Court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

VI. Conducted by the court. The appeal shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Hearing Commissioner not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

VII. Decision of court. The court may affirm, modify or reverse the decision of the Hearing Commissioner according to the applicable law, or may remand the case for further proceedings.'

Sec. 15. R. S., c. 20-A, § 14, additional. Chapter 20-A of the Revised Statutes, as enacted by section 1 of chapter 394 of the public laws of 1961, is amended by adding a new section 14, to read as follows:

'Sec. 14. Appeal to Supreme Judicial Court. An aggrieved party may appeal from the decision of the Superior Court to the Supreme Judicial Court as in other civil cases.'

Sec. 16. R. S., c. 61, § 8, sub-§ VIII, amended. Subsection VIII of section 8 of chapter 61 of the Revised Statutes is amended to read as follows:

'VIII. Licensing. To issue and renew ~~suspend and revoke~~ all licenses provided for by this chapter and to hold hearings thereon.'

Sec. 17. R. S., c. 61, § 56, sub-§ I, amended. The first 6 sentences of subsection I of section 56 of chapter 61 of the Revised Statutes, as repealed and replaced by chapter 218 of the public laws of 1959, are amended to read as follows:

~~'The Office of Hearing Examiner for the State Liquor Commission, as heretofore established, shall be under the supervision of a Hearing Examiner. The Hearing Examiner, as heretofore appointed, shall be appointed by the Governor by and with the advice of the Council, for a term of 4 years. The Hearing Examiner shall be an attorney at law duly admitted to practice before the courts of Maine. He may be removed from office by the Governor for misfeasance, malfeasance and nonfeasance in office. He shall receive an annual compensation of \$6,000 and shall be entitled to actual and necessary expenses in the performance of his duties~~

The Administrative Hearing Examiner Commissioner, as designated in chapter 20-A, shall conduct hearings on all matters concerning violations by licensees of any federal or state law or regulation relating to intoxicating liquor or infractions of any rule or regulation issued by the State Liquor commission after notice of such violation or infraction has been reported to him on a signed complaint by a duly designated enforcement officer of said commission.'

Sec. 18. R. S., c. 61, § 56-A, amended. The first paragraph of section 56-A of chapter 61 of the Revised Statutes, as enacted by section 6 of chapter 410 of the public laws of 1957, is amended to read as follows:

'A full and complete record shall be kept of all proceedings had before the Hearing Examiner on the revoking and suspending of any license issued by the commission, but the Hearing Examiner need not have a transcript of the testimony prepared unless required for rehearing or appeal.'

Sec. 19. R. S., c. 79, § 4, amended. The last sentence of section 4 of chapter 79 of the Revised Statutes is repealed and the following enacted in place thereof:

'On the basis of evidence which is pertinent to the issues, the Administrative Hearing Commissioner shall enter his findings and issue his decision affirming, modifying or revoking the order of the commission.'

Sec. 20. R. S., c. 79, § 11, amended. The last sentence of section 11 of chapter 79 of the Revised Statutes is repealed and the following enacted in place thereof:

'Any person, corporation or party aggrieved by any order or decision of the commission under this section may appeal to the Administrative Hearing Commissioner according to the procedure outlined in section 10.'

Sec. 21. R. S., c. 80, § 7, amended. The first sentence of section 7 of chapter 80 of the Revised Statutes, as repealed and replaced by section 43 of chapter 394 of the public laws of 1961 and as amended, is repealed and the following enacted in place thereof:

'The Administrative Hearing Commissioner as designated in chapter 20-A may suspend or revoke any certificate issued by the board on proof of bad moral character, dishonesty, conviction of crime, incompetency or unprofessional conduct by the holder of the certificate.'

Sec. 22. R. S., c. 81, § 17, amended. The first paragraph of section 17 of chapter 81 of the Revised Statutes is amended to read as follows:

'The ~~board~~ Administrative Hearing Commissioner as designated in chapter 20-A shall have the power to revoke the registration of any architect upon proof of violation of any of the provisions of this chapter or of violation of any of such rules and regulations as the board may establish to govern the practice of architecture in this State.'

Sec. 23. Amendatory clause. Wherever in the Revised Statutes or in the public laws the words "Hearing Officer," as they relate to the Administrative Code, and the words "Hearing Examiner," as they relate to the State Liquor Commission, appear, they shall mean 'Administrative Hearing Commissioner.'

Sec. 24. Intent. It is the intent of the Legislature that this act shall in no way affect the present tenure of the present Hearing Officer and the present employees in the office of the Hearing Officer.

Sec. 25. Intent and first Administrative Hearing Commissioner. It is the intent of the Legislature that this act shall in no way affect the present tenure of office of the present Hearing Examiner for the State Liquor Commission. The first Administrative Hearing Commissioner under this act shall be the Hearing Examiner for the State Liquor Commission serving as such at the effective date of this act, and he shall serve until the expiration of his term.

Sec. 26. Appropriation. There is appropriated from the General Fund to the Administrative Hearing Commissioner the sum of \$14,908 for the fiscal year ending June 30, 1964 and \$15,012 for the fiscal year ending June 30, 1965 to carry out the purposes of this act. The breakdown is as follows:

	1963-64	1964-65
ADMINISTRATIVE HEARING COMMISSIONER		
Personal Services	(2) \$13,408	(2) \$13,512
All Other	1,500	1,500
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	\$14,908	\$15,012

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.