

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

REVISED STATUTES
OF THE
STATE OF MAINE
1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

changed by the amendments, it is not set out.

Effective date. — P. L. 1959, c. 361, amending this section, provided in section

14 thereof as follows: "The provisions of this act shall become effective for the week ending August 22, 1959."

Sec. 4. Public charities.

Stated in *Pierce v. How*, 153 Me. 180, 136 A. (2d) 510.

Cited in *Belfast v. Goodwill Farm*, 150 Me 17, 103 A. (2d) 517.

Sec. 9. Consult with and advise county attorneys.—The attorney general shall consult with and advise the county attorneys in matters relating to their duties. If in his judgment the public interest so requires, he shall assist them by attending the grand jury in the examination of a case in which the accused is charged with treason or murder, and if in his judgment the public interest so requires, he shall appear for the state in the trial of indictments for treason or murder. He may institute and conduct prosecutions for all offenses against chapter 3-A, and for that purpose attend and present evidence to grand juries and assist them in the examination of witnesses and drawing indictments. He may, in his discretion, act in place of or with the county attorneys, or any of them, in instituting and conducting prosecutions for crime, and is invested, for that purpose, with all the rights, powers and privileges of each and all of them. Any or all of the powers and duties enumerated in this section may, at the discretion of the attorney general, be delegated to and performed by, the deputy attorney general or any assistant attorney general. The authority given under this section shall not be construed to deny or limit the duty and authority of the attorney general as heretofore authorized, either by statute or under the common law. (R. S. c. 17, § 9. 1951, c. 239. 1961, c. 257; c. 360, § 2.)

Effect of amendments.—Chapter 257, P. L. 1961, divided the first sentence of this section into two sentences, inserted "if in his judgment the public interest so requires, he shall" in the present second sentence,

inserted the present fifth sentence and made other minor changes. Chapter 360, P. L. 1961, substituted "chapter 3-A" for "the provisions of chapters 3, 4, 5, 6 and 9" in the present third sentence.

Chapter 20-A.

Administrative Code.

Sec. 1. Definitions.—For the purpose of this chapter:

I. Agency. "Agency" means the following state boards, commissions, departments or officers authorized by law to make rules or to adjudicate contested cases:

Board of examiners of funeral directors and embalmers.

Board of barbers and hairdressers.

Plumbers' examining board.

Department of health and welfare, but only as that department controls and supervises the licensing of institutions, businesses or individuals in the following categories:

A. All institutions licensed under chapter 25, section 5;

B. Private mental hospitals;

C. Recreational camps and roadside places;

D. Cosmetics;

E. Hospitals and related institutions;

F. Children's homes.

G. Control of ionizing radiation.

Maine milk commission.

Maine mining bureau.

Board of registration in medicine.

Board of examiners of psychologists.
 Commissioners of pharmacy.
 Board of registration of nurses.
 Board of osteopathic examination.
 Board of chiropractic examination.
 Board of dental examiners.
 Examiners of podiatrists.
 Board of registration in optometry.
 Board of veterinary examiners.
 Board of sanitation.
 Board of accountancy.
 Water improvement commission.
 Board of registration for architects.
 Electricians examining board.
 Oilburnermen's licensing board.
 Maine real estate commission.
 Art commission.
 Harness racing commission.
 Running horse racing commission.
 Boxing commission.

II. Contested case. "Contested case" means a proceeding before the hearing officer in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after hearing. It does not include informal meetings held by consent of the agency and all interested parties.

III. Rule. "Rule" 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 specific the law enforced or administered by it or to govern its organization or procedure, but 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. (1961, c. 394, § 1.)

Editor's note.—The former state board of 218, 220 to 230, re board of hairdressers.
 barbers and hairdressers has been replaced See c. 25, §§ 230-A to 230-P, re board of
 by the state board of hairdressers and the barbers.
 state board of barbers. See c. 25, §§ 213 to

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 rules of practice before the agency, 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 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 of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall submit the proposed rule or amendment to the attorney general for approval or disapproval as to form and legality. (1961, c. 394, § 1.)

Sec. 3. Filing and taking effect of rules.

I. Filing with secretary of state. Each agency shall file forthwith with the secretary of state a certified copy of each rule hereto adopted by it and each rule in effect when this chapter takes effect. The secretary of state shall keep a permanent register of such rules open to public inspection.

II. Filing with attorney general. Each agency shall file forthwith with the attorney general a certified copy of each rule hereafter adopted by it.

III. Approval. No rule shall hereafter become effective until approved as to form and legality by the attorney general. Such approval shall be presumed if the attorney general takes no action within a period of 30 days after the proposed rule or amendment is submitted for such approval.

IV. Effective date. Except as set forth in subsection III, each rule hereafter adopted shall become effective upon filing, unless a later date is required by statute or specified in the rule. (1961, c. 394, § 1.)

Sec. 4. Publication of rules.

I. Publication. The secretary of state shall, as soon as practicable after the effective date of this chapter, 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.

II. Omissions. The secretary of state may in his discretion omit from the compilation, 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.

III. 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. (1961, c. 394, § 1.)

Sec. 5. Petition for adoption of rules.—Any interested person may petition an agency requesting the promulgation, 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. (1961, c. 394, § 1.)

Sec. 6. Petition for declaratory rulings by agencies.—On petition of any interested person, any agency may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. Such a ruling is subject to review in the superior court in the manner provided for appeal of decisions in contested cases. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. (1961, c. 394, § 1.)

Sec. 7. Hearing officer.—The office of hearing officer is established and shall be under the supervision of the hearing officer. The hearing officer shall be appointed by the governor with the advice and consent of the council, for a term of 4 years. The hearing officer shall be an attorney at law duly admitted to practice before the courts of the state of Maine. He may be removed from office by the governor for misfeasance, malfeasance or nonfeasance in office. He shall receive such per diem compensation for services actually rendered in the performance of his duties as shall be set by the governor and council, and shall be entitled to actual and necessary expenses in the performance of his duties and is authorized to employ such clerical assistance as he shall deem necessary. The hearing officer shall hold himself ready to conduct hearings in connection with any contested case involving any of the agencies enumerated in section 1. Upon receipt

of written notice from an agency the hearing officer shall thereupon conduct a hearing limited to the facts and law and governed by this code and any applicable regulations or rules of the agency involved. The hearing officer is authorized to subpoena and examine witnesses in accordance with this chapter. The hearing officer shall state in writing his findings of fact and conclusions of law in each case. The per diem compensation and expenses of said hearing officer shall be paid by the agency which instituted the proceeding which caused the hearing to be held from any funds appropriated to or available to said agency. (1961, c. 394, § 1.)

Sec. 8. Contested cases; notice, hearing, records.—In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. A clear and concise statement or complaint shall be filed with the hearing officer upon the commencement of any contested case. A notice of the proposed hearing, accompanied by a copy of the complaint, must be served upon the party to be proceeded against, either by personal delivery in hand or by mailing said notice by registered mail to the last known address of the party to be proceeded against. This notice, accompanied by a copy of the complaint, must be served at least 30 days before the time specified for the hearing, and must inform the party served of the time limit for filing an answer to the complaint. The notice shall state the time, place and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The hearing officer shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purposes of rehearing or court review. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases. (1961, c. 394, § 1.)

Sec. 9. Emergency hearing.—The provisions of section 8 shall be waived if the director or chairman of the agency involved determines that an emergency exists, which emergency makes immediate action imperative and if due notice is given all parties involved in the hearing. (1961, c. 394, § 1.)

Sec. 10. Rules of evidence; official notice.—In contested cases:

I. Rules of evidence. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable, prudent men in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. He may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

II. Evidence considered. All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

III. Cross-examination. Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

IV. Documentary evidence. Whenever the agency or any party to the contested case intends to introduce documentary evidence other than official records as recognized by statute, the party offering the evidence shall first notify all other parties. Adverse parties may then demand the right to cross-examine the writer or affiant. If this right of cross-examination is not claimed within a reasonable time after notification it shall be deemed to have been

waived and the document will be admitted in evidence. If demand is made for the right to cross-examine, but the writer or affiant is not produced, then the document in question shall be excluded as hearsay.

V. Facts noted by hearing officer. The hearing officer may take notice of judicially cognizable fact and in addition may take notice of general, technical or scientific facts within his specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and they shall be afforded an opportunity to contest the facts so noticed. The hearing officer may utilize his experience, technical competence and specialized knowledge in the evaluation of the evidence presented to him. (1961, c. 394, § 1.)

Sec. 11. Subpoena.—Subpoenas for the attendance of any witness or for the production of any document shall be issued by the hearing officer at the request of a party in a contested case or upon the motion of the hearing officer conducting the hearing. (1961, c. 394, § 1.)

Sec. 12. Decisions and orders.—The hearing officer shall have the power, after hearing, to suspend, revoke or modify the license of any party properly before him, and to take any other action with relation to that party which could have been taken, before the passage of this chapter, by the agency involved in the hearing.

The hearing officer shall have no power or authority under this or any other section of this Administrative Code to hear or in any way determine the competence or qualifications of any person applying to an agency for a license to engage in a profession or business.

Every decision and order adverse to a party to the proceeding rendered by the hearing officer in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order accompanying findings and conclusions shall be delivered or mailed upon request to each party or his attorney of record. (1961, c. 394, § 1.)

Sec. 13. Appeal.

I. Appeal. Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to appeal.

II. Procedure. Appeal shall be instituted by filing a complaint in the superior court within 30 days after the service of the final decision of the hearing officer. Copies of the complaint shall be served upon the agency and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

III. Effect. The filing of the complaint shall not stay enforcement of the decision, but the agency may do so or 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 officer 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 the 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 officer, the court may order the additional evidence to be taken before the hearing officer upon such conditions as the court deems proper. The hearing officer 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 modifications 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 officer 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 the decision of the hearing officer or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the plaintiffs may have been prejudiced because the findings, inferences, conclusions or decisions are in violation of constitutional provisions; or in excess of the statutory authority or jurisdiction of the agency; or made upon unlawful procedure; or affected by other error of law; or unsupported by competent, material and substantial evidence in view of the entire record as submitted; or arbitrary or capricious. An appeal may be taken to the law court as in other actions. (1961, c. 394, § 1.)

Chapter 21.

Secretary of State.

Office and Duties.

Sec. 1. Secretary of state; office and duties; vacancy; salary; expenses; fees.

The secretary of state shall receive an annual salary of \$10,200. He and his deputy shall also receive such actual traveling expenses incident to the administration of his department as shall be necessary.

(1955, c. 473, § 6. 1957, c. 418, § 6. 1959, c. 361, § 6. 1961, c. 377, § 1.)

Effect of amendments. — The 1955 amendment increased the annual salary of the secretary of state from \$7,000 to \$8,000.

The 1957 amendment, effective July 1, 1957, increased his annual salary from \$8,000 to \$9,000 and carried appropriations for the fiscal years ending in 1958 and 1959.

The 1959 amendment increased the salary of the secretary of state from \$9,000 to \$10,000 and carried appropriations for the fiscal years ending June 30, 1960 and 1961.

The 1961 amendment increased the salary of the secretary of state from \$10,000 to \$10,200 and carried appropriations for fiscal years ending June 30, 1962 and 1963.

As only the second paragraph was changed by the amendments, the rest of the section is not set out.

Effective date. — P. L. 1959, c. 361, amending this section, provided in section 14 thereof as follows: "The provisions of this act shall become effective for the week ending August 22, 1959."

Section 2, c. 377, P. L. 1961, provides that the act shall be retroactive to July 1, 1961.

Sec. 4. Prepare commissions, record qualifications, engross bills.

Cited in Opinion of the Justices, 152 Me. 212, 142 A. (2d) 532.

Sec. 5. Distribute blanks for election returns; penalty for neglect.— He shall cause blanks for all election returns required by law to be seasonably distributed to the clerks of the several towns, by mail. If any clerk fails to receive such blanks by the 20th day of October in any year in which an election is held, of which returns are to be made to the office of the secretary of state, he shall