

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

1963

other" preceding "civil" and added "actions and" following "civil" in the first sentence of the first paragraph. It also substituted "actions" for "suits" in three instances in the first paragraph.

P. L. 1963, c. 396, § 3, increased the salary of the attorney general from \$10,000 to \$11,000 and carried appropriations for the fiscal years ending June 30, 1964 and 1965. P. L. 1963, c. 414, § 2, added the last sentence in the first paragraph.

Sec. 4. Public charities.

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

As the rest of the section was not 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."

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; c. 417, § 29.)

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 417, P. L. 1961, re-enacted the present third sentence without change.

Chapter 20-A.

Administrative Code.

Editor's note.—P. L. 1963, c. 412, which amended §§ 1 to 10 and 11 to 13 of this chapter and added §§ 10-A and 14, provided in §§ 23 to 25 as follows:

"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. 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. All establishments licensed under chapter 25, section 162;

D. Cosmetics;

E. Hospitals and related institutions;

F. Children’s homes.

G. Control of ionizing radiation.

Maine milk commission.

Passenger tramway safety board.

Maine mining bureau.

State liquor commission.

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.

Secretary of state, but only as he controls and supervises the licensing of auctioneers.

Chief of state police, but only as he controls and supervises the licensing of official inspection stations.

Maine motor vehicle dealer registration board.

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

III. Rule. “Rule,” as applied to a rule adopted, amended or repealed by an agency, includes every regulation, standard, statement of policy or interpretation of general application and future effect, which implements or makes specific the law enforced or administered by the agency or governs its organization or procedure. It does not include regulations concerning only the internal management of the agency not directly affecting the rights or procedures available to

the public, and does not include rules already in effect on September 16, 1961. **IV. Hearing commissioner.** "Hearing commissioner" means the administrative hearing commissioner appointed under section 6. (1961, c. 394, § 1; c. 417, §§ 30, 31. 1963, c. 201; c. 240, § 1; c. 412, §§ 1-5.)

Effect of amendments. — The 1961 amendment added "Passenger tramway safety board" to paragraph G of subsection I and added "secretary of state, but only as he controls and supervises the licensing of auctioneers" to such paragraph.

P. L. 1963, c. 412, effective June 27, 1963, rewrote paragraph C of subsection I which formerly related to recreational camps, added "State liquor commission" to paragraph G of subsection I, deleted the former second sentence of subsection II which related to informal meetings, rewrote subsection III and added subsection

IV. P. L. 1963, c. 201, added "Chief of state police, but only as he controls and supervises the licensing of official inspection stations" to paragraph G of subsection I. P. L. 1963, c. 240, § 1, added "Maine motor vehicle dealer registration board" to paragraph G of subsection I.

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

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

I. Adopt rules. Each agency may adopt, amend and repeal rules of practice before 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, the 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, the agency shall submit the proposal to the attorney general for approval as to form and legality. (1961, c. 394, § 1. 1963, c. 412, § 6.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote subsections I, III and IV.

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. (1961, c. 394, § 1; c. 417, § 32. 1963, c. 412, § 7.)

Effect of amendments.—The 1961 amendment made minor changes in former subsection I and added "with the secretary of

state" to former subsection IV.

The 1963 amendment, effective June 27, 1963, rewrote the section.

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. (1961, c. 394, § 1. 1963, c. 412, § 8.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section.

Sec. 5. Petition for adoption of rules.—Any interested person may petition an agency, except the liquor commission, requesting the 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. (1961, c. 394, § 1. 1963, c. 412, § 9.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, added the exception as to the liquor commission and substituted “adoption” for “promulgation” in the first sentence.

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. (1961, c. 394, § 1. 1963, c. 412, § 10.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section which formerly applied to a petition for declaratory rulings by agencies.

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. (1961, c. 394, § 1. 1963, c. 412, § 10.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section which formerly applied to the hearing officer.

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. (1961, c. 394, § 1. 1963, c. 412, § 11.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section.

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. (1961, c. 394, § 1. 1963, c. 412, § 13.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section.

Sec. 10. Rules of evidence.—The rules of evidence as applied in the trial of civil cases in the state shall be observed whenever practicable except that this section shall not apply to hearings under chapter 61.

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. (1961, c. 394, § 1. 1963, c. 412, § 13; c. 414, § 163.)

Effect of amendments.—P. L. 1963, c. 412, § 13, effective June 27, 1963, rewrote this section. P. L. 1963, c. 414, § 163, effective 91 days after adjournment of the legislature, rewrote the first sentence of this section as amended.

Sec. 10-A. Limitation.—In any conflict between this chapter and chapter 61, the provisions of chapter 61 shall prevail. (1963, c. 412, § 12.)

Effective date.—The 1963 act adding this section became effective on its approval, June 27, 1963.

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 subpoena. 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. (1961, c. 394, § 1. 1963, c. 412, § 13.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section.

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. (1961, c. 394, § 1. 1963, c. 412, § 13.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section.

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 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 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. (1961, c. 394, § 1. 1963, c. 412, § 14.)

Effect of amendment.—The 1963 amendment, effective June 27, 1963, rewrote this section.

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. (1963, c. 412, § 15.)

Effective date.—The 1963 act adding this section became effective on its approval, June 27, 1963.

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 be the executive head of the department of the secretary of state, as heretofore established, and shall keep his office at the seat of government; have the custody of the state seal and preserve all records in such office, at the expense of the state. When a vacancy happens in the office of secretary of state during the recess of the legislature, the governor, with the advice and consent of the council, shall appoint a suitable person to act as secretary of state until one is elected by the legislature; and the person thus appointed shall take the oath required of the elected secretary; and have the same compensation while he performs the duties of the appointment.

The secretary of state shall receive an annual salary of \$12,500. He and his deputy shall also receive such actual traveling expenses incident to the administration of his department as shall be necessary.

The secretary of state shall collect the legal and usual fees payable to him by virtue of his office and shall pay them over forthwith to the treasurer of state. (R. S. c. 18, § 1. 1945, c. 370. 1951, c. 412, § 6. 1955, c. 473, § 6. 1957, c. 418, § 6. 1959, c. 361, § 6. 1961, c. 377, § 1. 1963, c. 396, § 4; c. 414, § 3.)

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