

MAINE STATE LEGISLATURE

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COMMITTEE ON LEGAL AFFAIRS
REPORTS ON ITS STUDIES OF
SMALL CLAIMS, VILLAGE CORPORATIONS,
AND THE USE OF THE NAME OF THE STATE BY NON-PROFIT CORPORATIONS

Senate

Cyril M. Joly, Jr., Chairman
John B. Roberts
Lowell D. Henley

House

David F. Emery, Chairman
Francis B.B. Brawn
Richard J. Carey
Laurence E. Connally, Jr.
Albert E. Cote
James T. Dudley
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Report of the Committee on Legal Affairs
on Study of Small Claims

The Legislative Council charged the Joint Standing Committee on Legal Affairs to study the methods by which the Legislature adjudicates small claims against the State and to determine whether another process would serve better. The text of the order authorizing the study is as follows:

WHEREAS, the Legislature processes a number of small claims during the course of each regular session;

WHEREAS, a substantial amount of time, effort and funds are presently required for this process which, at times, exceeds the amount claimed; and

WHEREAS, this system of redress is in need of change for the sake of expediency and economy of both claimant and State; now, therefore, be it

ORDERED, the Senate concurring, that the Legislative Research Committee is authorized and directed to study the manner and costs involved by which the Legislature presently processes claims for the purpose of determining whether or not it is in the best interest of the State to establish a claims commission or other process to adjudicate all claims or those up to certain amounts; and be it further

ORDERED, that the office of the Attorney General be called upon to assist the committee in devising such procedures in light of statutory, constitutional and other requirements of law; and be it further

ORDERED, that the committee report the results of its findings, together with all necessary recommendations and implementing legislation or rules at the next regular session of the Legislature.

The committee briefly discussed the possibility of legislation to establish a claims commission, such as had been proposed to and rejected by previous Legislatures, but felt that such action was not appropriate at

this time. The committee decided instead to approach the problem by establishing new procedures for the several types of claims that are most frequently presented. These are claims for damage to bee hives by bears, for damage caused by escaping prisoners, for damage by children in state custody and for various types of damage caused by highway construction or maintenance.

The committee instructed the Legislative Assistant assigned for the study to draft legislation establishing an administrative procedure for handling these types of claims. Bills were drafted for the first three of the most frequent types of claims, giving the appropriate agency the authority to make payment of claims up to a certain monetary limit and retaining the authority of the Legislature to dispose of claims over the monetary limit. No bill was drafted for highway claims, because research revealed that there are two statutes (23 M.R.S.A. § 652 and § 3655) which govern proceedings on certain types of claims and because the committee wanted further information on how such claims were handled.

At a committee meeting on October 30, 1973, the three bills that were drafted were discussed. A motion was made at this time that there be established a claims commission made up of representatives from the three departments involved to handle these claims, but this motion was defeated. The bill on damage to bee hives by bears was acted upon favorably, after some technical changes suggested by the committee were made. A motion was made not to pass the bill on damage by escaping prisoners on the basis that the Legislature should be aware of how much such damage was done and on the

basis that the actions of the Department of Mental Health and Corrections should be under closer legislative scrutiny. A motion was made not to pass the bill on damage by children in state custody because few such claims are presented. Both of these motions passed.

The information that the committee had requested from the Department of Transportation did not arrive in time for the committee to take any action on highway damage claims.

The committee did recommend that claims for damage by escaping prisoners be referred to the Committee on Health and Institutional Services, since that committee processes most of the legislation involving the Department of Mental Health and Corrections.

The committee also recommended that the Legislature consider re-establishing a Committee on Claims to remove some of the burden from the Committee on Legal Affairs.

Report of the Legal Affairs Committee
on Study of Village Corporations

The Legislative Council charged the Joint Standing Committee on Legal Affairs with studying the active village corporations to determine whether some or all of them are still useful forms of government or whether some or all of them should be abolished.

The text of the study order is as follows:

WHEREAS, there are 13 village corporations remaining in the State of Maine, out of 70 which were formed; and

WHEREAS, village corporations were formed by the Legislature in the early 1900's; and

WHEREAS, they appear to be archaic forms of government which cause unnecessary duplication and governmental inefficiency on the municipal level; and

WHEREAS, during each session of the Legislature some disagreement between a municipality and a village corporation comes to the attention of the Legislature for resolution occupying a considerable amount of the Legal Affairs Committee's time; and

WHEREAS, the Legislature has granted the municipalities home rule, except for those municipalities which contain village corporations which must share revenue and certain governmental responsibilities with the village corporations; and

WHEREAS, the distribution of revenue sharing money is unduly complicated by the existence of village corporations because they are not municipalities; now, therefore be it

ORDERED, the House concurring, that the Legal Affairs Committee is authorized to make a study of the 13 remaining village corporations to determine which, if any, should be abolished and to prepare legislation which implements its recommendations for presentation to the special session of the 106th Legislature, if one is called, or to the 107th Legislature.

The committee, working with the Legislative Assistant assigned for the study, began with a review of a detailed paper on the subject, The Maine

Village Corporation: Past, Present and Future, by James J. Haag of the Bureau of Public Administration, University of Maine, a copy of which is attached to this report.

The chairmen of the committee instructed the Legislative Assistant to prepare a draft of legislation to abolish the existing village corporations, which was done, to determine the number of bills concerning village corporations that had been filed in the legislature in the last 20 years, and, along with the chairmen, to contact officials in towns with village corporations to ascertain their attitudes on the continued existence of those entities.

An examination of the Register of Bills and Resolves revealed that 34 bills concerning the active village corporations had been filed since 1953.

Contact with local officials revealed that some of the village corporations were still viable forms of government. The Buckfield Village Corporation and the Farmington Village Corporation both function in effect as local water districts for the village areas of these municipalities and serve primarily in just this capacity. The Bustin's Island Village Corporation in Freeport provides services to the island which the town could not. The island has 200 to 300 summer residents, no year-round residents, and is one-half hour away by boat.

Other village corporations no longer serve a useful function. According to the town manager of Gorham, the Gorham Village Corporation exists primarily to appoint a committee which oversees recreation programs on land donated to the corporation. The town makes an annual appropriation

to the corporation, but could find another way to administer the programs if the corporation were repealed.

The committee voted to table any action on the study until after the vote in the Town of York in November on a referendum on the repeal of both the York Harbor Village Corporation and the York Beach Village Corporation, pursuant to chapter 75 of the private and special laws of 1973. The proposition to repeal did not receive the 2/3 vote required by chapter 75.

The committee met again on November 27, and because of the results of the study and of the vote in York, voted unanimously that no action be taken regarding the repeal of village corporations.

Report of the Legal Affairs Committee
on Use of the Name of the State by Non-profit
Corporations

The Committee on Legal Affairs, on its own initiative, requested and received from the Legislative Council the authority to study the possibility of legislation to establish an administrative procedure to authorize the use of the name of the state in the titles of non-profit corporations. Under the present system, non-profit corporations must be individually authorized by the Legislature to use the state name, and this has consumed a great deal of time and expense for the Legal Affairs Committee and for the Legislature. The committee heard 16 such bills during the Regular Session of the 106th Legislature.

The chairman of the committee directed the Legislative Assistant assigned for this study to prepare a memorandum on the background and purpose of the present law and to draft legislation to give the Secretary of State the power to authorize the use of the state name.

The present law is 13 M.R.S.A. § 982, which reads as follows:

§ 982. Use of state name: forfeiture of appropriation

No charitable institution or association of a private or of a semipublic nature, incorporated by special act of the Legislature or organized in conformity with section 901 after the 11th day of July, 1913, shall use the name of the State in its title. The members of any existing voluntary association established prior to said day and theretofore using the name of the State in its title may, subsequent to said day, incorporate under the same title in conformity with said section 901. If, upon complaint by any person, the Governor and Council, after notice and hearing, find that any institution or association has violated this section, such institution or association shall forfeit its right to any appropriation from the State.

This statute was enacted in essentially its present form in 1913. The only amendment was in 1919, when the Legislature added the "grandfather clause", the sentence allowing organization using the state name before July 11, 1913 to continue to do so.

Unfortunately, there is no legislative history whatsoever on this statute. The Legislative Record for 1913 and 1919 disclose that both the original bill and the amendment were passed without any debate or discussion and therefore without any recorded statement of the reasons for the bills. The original Legislative Documents for both the original and the amendment did not have the customary Statement of Fact.

Despite the lack of a legislative history, the basic intent of this statute is fairly clear. The law has always been concerned with protecting both business corporations and non-profit organizations in their rights to their names and in preventing other persons or corporations from using deceptively similar names. The present laws for this purpose are 13 M.R.S.A. § 983, for non-profit corporations, and 13-A M.R.S.A § 301 et seq. for business corporations. The primary interest of 13 M.R.S.A. § 982 is to prevent organizations from using titles which, by inclusion of the state name, are deceptively similar to state agencies and which the public might confuse with an official state agency, especially if the private organization has a charitable or semipublic purpose similar to that of a state agency.

As a result of this study, draft legislation was prepared to amend 13 M.R.S.A. § 982 to read as follows:

§ 982. Use of state name; forfeiture of appropriation.

No charitable institution or association of a private or semi-public nature, incorporated by special act of the Legislature or organized in conformity with section 901 after the 11th day of July, 1913, shall use the name of the State in its title without the approval of the Secretary of State. The Secretary of State shall grant such approval only if such institution or association performs functions of a statewide nature or of benefit to the State as a whole, or, when the title requested includes the name of the State only in reference to a region of the State, only if such institution or association performs functions throughout the region or of benefit to the region as a whole, and only if the title of such institution or association would not be the same as, or deceptively similar to, the name of any department, bureau or other agency of the State of Maine. The Secretary of State may issue appropriate rules and regulations to administer this section. The members of any existing voluntary association established prior to said day the 11th day of July, 1913 and theretofore using the name of the State in its title may, subsequent to said day, incorporate under the same title in conformity with said section 901. Any charitable institution or association of a private or semi-public nature to which the Legislature has granted the right to use the name of the State in its title may continue to do so. If, upon complaint by any person, the Governor and Council, after notice and hearing, find that any institution or association has violated this section, such institution or association shall forfeit its right to any appropriation from the State.

The committee voted unanimously to accept this legislation. The bill was enacted as chapter 553 of the public laws, after having been amended to grant the approval power to the Attorney General rather than to the Secretary of State.