

# MAINE STATE LEGISLATURE

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Dec. to L.

Jan. 5, 1910.

Lewis M. Fulton Esq.,  
Office of Selectmen,  
Bowdoinham, Me.

Dear Sir:-

I am taking the first available opportunity to examine more carefully your letter of Dec. 18th. and to answer the inquiry therein made.

You call attention to chap. 82 of the Public Laws of 1907 relating to school buildings, churches or other public buildings which are heated by a steam plant located in or under or near such building. From your statement it appears that the building under consideration is used as a store on the first floor, for offices on the second floor and for a lodge room on the third floor. The question then arises whether such a building is a public building within the meaning of the statute.

The words Public building have not been defined by the Supreme Court of this state, although the words public place have been defined and the definition is that a public place is one where citizens have occasion to resort. This would not necessarily mean all the citizens of the town. Mass. gives a statutory definition of a public building as being "all buildings or premises used as a place of public entertainment, instruction, resort or assemblage." You will notice however that this is a definition given by the statute and not by the court and applies only to Mass. The Supreme

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court of Georgia has declared that a public building is only such a building as is owned by the public like state houses, court houses, city halls and the like, but does not include a church. The Supreme Court of Texas also defines public buildings to be such as are held for public use by any department or branch of government, state, county or state. California has defined public buildings in a certain statute as referring only to buildings of the state. Connecticut has also given a statutory definition of public buildings and declared them to include those belonging to the state or to any county, town, or city in the state, and also any church, chapel, meeting house, or other buildings generally used for religious worship, and any college, academy, school house, or other building generally used for literary instruction. You will observe that the statutory construction in Connecticut is somewhat on the same line as the statutory construction or definition given in Mass.

From what I have said you will observe that there are two distinct ways in which the expression public building may be defined, one having reference to the ownership of the building and the other to its use. It is quite clear that some states prefer to use the words public building when referring to buildings used or owned by the public as for instance, the state, county, city or town. Another way to define the words public buildings would be with reference to its use, that is whether it is resorted to by the public and in that sense become a public building.

The statute in Maine is very unfortunate in its language as it does not clearly state what is meant by public building, whether it means simply those owned by the public or those resorted to by the public. Moreover it classes churches with public buildings and this condition could not exist unless the legislature had in mind that a building which was resorted to by the public was intended by the statute rather than a building owned by the public for it cannot be properly said that a church is owned by the public. It will be observed also, that a store is more or less a place resorted to by the public.

I am calling your attention to all of these things in order that you may understand that it is no easy task to answer such questions as you propose nor is it an easy task to always determine what the legislature intended by the language which was used. Until the legislature had made itself more plain I should hesitate very much to say to municipal officers that they must require the provisions of the statute to be complied with in every case of a building to which the public might simply resort. A building which is owned by the public comes clearly within the provisions of the act. Churches although not owned by the public are specifically included in the act. But buildings owned by private parties, associations or corporations and not in any way owned by the public but to which the public might more or less resort, hardly seems to me to come within the provision of the act.

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I might add in closing that the court of New Jersey has defined public building as being "one of which the possession and use, as well as the property in it, are in the public."

In closing I will say that while the legislature evidently had in mind the safety of the public, yet I can hardly advise that the building which you describe comes within the meaning of the Public Laws of 1907, chap. 82.

Yours very truly,

Attorney General.