

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

MERRILL & WEBBER CO., AUBURN, MAINE

PRINTERS AND BOOKBINDERS

The Commission for the Promotion of Uniformity of Legislation in the United States was created by Chapter 138, P. L. 1895, which authorized the appointment by the Governor of three commissioners. No tenure of office of such commissioners was fixed by the act and apparently no subsequent legislature has seen fit to establish such tenure. The tenure of office of these commissioners, therefore, not being fixed by law or limited by the Constitution nor being during the pleasure of the Governor and Council, in accordance with Section 37 of Chapter 2, now Section 41 of Chapter 2, R. S. 1916, is for four years and "*no longer*." "*No longer*", of course, precludes holding over and it was by reason of the "*no longer*" provision that Attorney General Wilson made his ruling referred to.

The tenure of office of the Maine Board of Accountacy is "*fixed by law*" at three years, and it is, therefore, not limited by the term "*no longer*" in Section 41, Chapter 2, R. S., and the opinion rendered by Mr. Wilson to Mr. Callahan in no way conflicts with my opinion rendered to you as above in the matter of Mr. Fagan.

I will say to you that in my opinion all civil officers appointed by the Governor and Council for a definite term or tenure of office fixed by law, hold over until their successors be lawfully chosen and duly qualified unless the particular statute creating the office otherwise specifically provides.

Very truly yours,

GUY H. STURGIS,

Attorney General.

JOINT RESOLUTION AS LEGISLATION.

25th April, 1917.

Hon. R. L. Wardwell, State Auditor, Augusta, Maine.

DEAR SIR: In reply to your inquiry of April 25th, relative to effect of Chapter 58 of the Resolve of 1917 and time of taking effect thereof, I beg to advise as follows:—

"A form of legislation which is in frequent use in this country is variously known in our legislative assemblies as a joint resolution, a resolution or a resolve. This form of legislation is recognized in our Constitution and in the rules and orders of our legislature is made subject to the same regulations that bills properly so-called have. In Congress a joint resolution, which is the name given in that body to this kind of legislation, is there re-

garded as a bill. (Cushings' Law and Practice on Legislative Assemblies.)

“Whenever a joint resolution does undertake to lay down a rule of conduct for any portion of the people of the State it becomes a law and will take effect as such notwithstanding the use of the word “Resolved” in its style instead of the word “Enacted”. (34 Cyc. 1167, n. 64. Swann vs. Buck, 40 Miss. 268, 293.)

The Constitution of Maine, Article 4, Part 3, Section 2, expressly recognizes a resolution as a proper and legal rule of legislative action. It provides that a resolution as well as a bill shall be presented to the Governor for his approval and in all ways gives equal and as full recognition to a resolution as to a bill.

Congress has recognized the legality and sufficiency of a resolution or resolve and concedes to a resolution all the force of law. (Hinds Precedence, Vol. 4, Sec. 33, 71.)

I am of the opinion that this resolve has the same effect as though it were properly speaking an act and effectually amends Section 2 of Chapter 147 of the Revised Statutes, but containing no emergency clause, however, it cannot have any effect or force until ninety days after the adjournment of the legislature and until the expiration of that period, Section 2, Chapter 147, R. S., remains in full force and effect and you should be governed thereby. The appropriation of \$8000, although effective on April 6th, as an appropriation has no purpose in existence to which it can be applied until Chapter 58 of the Resolves of 1917 becomes effective.

Yours very truly,

FRANKLIN FISHER,

Asst. Attorney General.

TAXATION OF PARLOR AND SLEEPING CAR COMPANIES—TIME OF TAKING EFFECT OF CHAPTER 210 OF PUBLIC LAWS OF 1917.

1st August, 1917.

Board of State Assessors, Augusta, Maine.

GENTLEMEN: We have your letter of July 25th, asking for an interpretation of Chapter 210, Public Laws of 1917. We understand that the only question involved is whether this particular law controls the amount of the tax assessed this year against the owners of parlor and sleeping cars.