

MAINE STATE LEGISLATURE

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February 17, 1919

To Hon. Frank W. Ball, Secretary of State
Re: Engrossing.

Confirming my oral opinion given you today that engrossing acts and resolves upon and by a typewriter constitutes a legal engrossing, I herewith reiterate that opinion and give you some of my reasons therefor.

Chapter 6 of the Acts and Resolves of 1866 substitutes printing for writing in the engrossing of acts and resolves, and provides that the same

"shall be engrossed by printing in a fair and conspicuous type upon suitable paper. . ."

While it may be fairly argued that at the time of the passage of this resolve, typewriters were not in existence, unless in a crude form and were not definitely contemplated by the framers of this resolve, with as much truth it may be stated that many of the present forms of printing machinery, as used in the printer's trade, such as linotype setters and the highly improved and modern printers' tolls and machines, were unknown and unthought of in 1866.

In the construction and interpretation of the resolve, the purpose of its passage or object in view is well worthy of our consideration. From earliest days all records had been written out in long hand. Persons skilled and especially trained in record writing were available and the custom of the ages in that regard had continued the ancient and laborious method of recording. The improvement of printer's inks, the availability of printing establishments and the advance in the printers' equipment, machinery, etc., undoubtedly convinced the legislators in 1866 of the advisability of adopting a speedier and equally satisfactory and permanent method of engrossing. Beyond a doubt, an examination of the laws of the several legislative years will also show that the acts and resolves biennially passed by the Legislature had increased greatly in number and the demands of the times called for new laws much more complex in character and much more lengthy in substance. All these things warranted a change from hand writing to printing.

It is a well-established rule of construction repeatedly recognized and affirmed by the Supreme Court of this State that

"When the act deals with genus and the thing which afterward comes into existence is a species of it, the language of the statute is generally extended to new things which were not known and could not have been contemplated by the legislature when the statute was passed."

McCann vs. Minot, 107 Maine 400

Hurley vs. South Thomaston,

105 Maine 306

Portland vs. N.E. Tel. & Tel. Co.,

103 Maine 205.

The provision of the resolve is that the acts and resolves

"shall be engrossed by printing in a fair and conspicuous type."

In my opinion, printing is a "genus". A fair and conspicuous type is a genus. Printing in a printshop on one of the modern printing presses is a "species" of the "genus" printing. To print on a printing machine, popularly denominated a typewriter, is a "species" of the "genus" printing. The fair and conspicuous type on the striking end of the type bar or the aggregate group of type on the several type bars of a typewriter are as much a "species" of the "genus" type as is the type of the type setting machinery and the printing press used to impress symbols, in the modern printer's shop.

In State vs. Oakland, 69 Kansas, at page 784, it is said:

"It is also contended that the notices were defective because they were typewritten but there is no merit in the point. The statute, it is true, provides that printed notices shall be posted; but those which were posted in this case were in a sense printed notices. Of what consequence was it whether the letters in the notice were formed by a typewriting machine or type setting machine. In other words, the letters are substantially in the same form, are made from type and are impressed on paper in lines and columns of varying length. In the Century Dictionary the word 'typewrite' is defined: 'to print or reproduce by means of a typewriter', and the word 'typewriting' is defined: 'the process of printing letter by letter by the use of a typewriter'. Printing is now accomplished by a great variety of machines but none is in more common use than the typewriter."

The typewriter has come into existence since the passage of the Resolve of 1866, but it is a printing machine. It prints, it has type and under the rules of construction above quoted, the language of Chapter 6 of the Acts and Resolves of 1866 may in my opinion be properly, and must be, extended to the typewriter and the acts and resolves engrossed thereon.

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