PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS

FOR THE TWO YEARS

JULY 1, 1928 - JUNE 30, 1930

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

---

for the calendar years

1929-1930

the province of boards of education. In the absence of any specific directions as to the manner of performing these duties, such boards are vested with full discretion limited by law, and they cannot be said to have abused that discretion when they follow what is generally conceded to be sound business practice in the management of property similarly situated."

I am annexing the full text of the various decisions above referred to.

Very truly yours,
CLEMENT F. ROBINSON
Attorney General

CROSS-CONNECTIONS

August 11, 1930

Dr. Clarence F. Kendall,
Commissioner of Health,
Augusta, Maine
Dear Dr. Kendall:

You inquire regarding the power of the State Department of Health to promulgate the regulations which you enclose regarding cross-connections between public and industrial water systems.

In my opinion:

1. Your department has the power to make regulations on this subject applicable to private industries.
2. Proposed regulations should be recast in some respects.
3. Enforcement of the regulations may involve invoking the jurisdiction of the Public Utilities Commission.

1. *The power to make regulations*

On their face, these regulations being obviously for the protection of the public health, your department has the power to make and promulgate them under the general provisions of P. L. 1917, Chapter 197, Section 4, P. L. 1919, Chapter 172, as amended by P. L. 1923, Chapters 116, 221. The proposed regulations are not plumbing regulations under Section 112 of the Health Law interpreted in the recent decision of State v. Prescott.

Your power to make such regulations is, however, by the Court's decision in State v. Prescott limited by the principle that you cannot make regulations in cases where jurisdiction has been conferred elsewhere. I find no statute conferring jurisdiction to make such regulations on any other agency of the government. By P. L. 1917, Chapter 98, passed by the same Legislature which adopted the first of the legislation previously referred to:

"The Public Utilities Commission shall consult with and advise the authorities of cities and towns and persons and corporations

having, or about to have, systems of water supply, drainage or sewerage as to the most appropriate source of water supply and the best method of assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns or persons or corporations which may be affected thereby."

This section does not confer on the Public Utilities Commission any rule-making power, but contemplates the giving of attention by that Commission to individual cases. Section 7 does provide a penalty for the violation of rules, regulations or orders made under the Act, but this section evidently refers to the express power conveyed by Section 2 of the Act to make orders in certain cases where complaint has been made and to other similar orders under other sections of the Act.

The Public Utilities Commission, of course, has exclusive jurisdiction over public utilities including water companies. This probably cuts your department out from the power to make regulations directly governing the action of these utilities, but leaves unaffected your power to make rules and regulations not applying directly to the utilities.

2. *The form of the regulations*

It seems to me that the proposed regulations should be recast so as to make it plain that they govern customers and not utilties. For instance, the regulations might be put in the form of providing that no person, firm or corporation taking water from a water company whose supply is used for drinking purposes, shall maintain any cross-connection between the water system of the public utility and its own private water system unless the cross-connection is protected, etc., and shall not hereafter install any such cross-connection except under the approval and supervision of your department.

Of your proposed regulations I doubt the advisability of the ninth paragraph which assumes to give you as absolute veto power on the installation of such connections based on your finding as to the necessity of their installation. It seems to me that your function is comprised in safeguarding devices installed or to be installed, but does not extend to ruling whether it is necessary for two water systems to be connected.

I also doubt the advisability of the last clause in your eighth paragraph which sets forth what the department may do in certain cases. Any order made in such individual case would stand on its own legs and not take its force from the general regulations promulgated.

I query also the advisability of requiring that installations be under your *direction*. Supervision and approval or disapproval are one thing, but in assuming to direct the installation you might be going beyond your province.

I understand that the representatives of the water companies and of the industries have informally conceded that the regulations are mechanically proper and probably unobjectionable. My suggestions are confined to the form of the regulations.

3. *Enforcement*

Here we have to consider to some extent the possibility of an overlapping of jurisdiction between your department and the Public Utilities Commission. Your department has the power to enforce its regulations by criminal procedure against the individuals violating the regulations,—P. L. 1919, Chapter 172, Section 15, as amended by P. L. 1923, Chapter 116.

You also have the power under P. L. 1925, Chapter 138, Section 125, to examine drinking supplies and issue orders against further use of polluted supplies, these orders being enforceable by fine and imprisonment.

There is a heavy penalty for knowingly and wilfully corrupting water supplies,—P. L. 1917, Chapter 126.

None of these provisions expressly give the power to your department to enforce regulations which aim to prevent the contamination of water in a water system by the inlet of other water into the pipes.

On the other hand, the Public Utilities Commission has the power to consider petitions by town or city officers, managing boards or officers of public institutions, or officers of water or ice companies, to the effect that the source of a water supply is being contaminated. Orders passed by the Commission upon such petitions are appealable to court and enforceable by fine or imprisonment. This section does not provide for procedure initiated by your department or for jurisdiction over a case where the pollution is of the water in the pipes and not of the original source of supply, or for complaint by any person except those specified.

By the Public Utilities Commission Act, however, the Commission may entertain complaints and make orders where "any service is inadequate." R. S. Chapter 55, Sections 43, 48, 50.

It seems to me that enforcement of your proposed regulations against a recalcitrant customer of a public water company might therefore work out in one of these ways:

1. You might swear out a criminal complaint against him under Section 15 of your Act.

Secondly,—The water company having refused to furnish him water because of the existence of your recommendation and for fear that its water supply might be contaminated, the customer might himself bring a proceeding before the Public Utilities Commission, and it would then be for that Commission to determine whether the water company was justified in cutting him off from the system.

Thirdly,—You might bring the matter to the attention of the Public Utilities Commission in the expectation that the Commission would take jurisdiction under Section 48 of its Act.

Fourthly,—Your board could make an order under Section 125 if examination showed the water actually contaminated. This order would affect the public utility directly.

Fifthly,—Criminal proceedings could be brought under P. L. 1917, Chapter 126, if the circumstances justified.

These possibilities involve an overlapping of jurisdiction between your department and the Public Utilities Commission which is more apparent than real. The jurisdiction of the Public Utilities Commission is exclusive in giving orders to public utilities except where a supply is actually contaminated and your board has jurisdiction under Section 125. You have, however, the power to enforce health regulations affecting private consumers by bringing criminal proceedings against a delinquent person other than a public utility, and by bringing the situation to the attention of the Public Utilities Commission for action under Section 48 of the Act when the circumstances so justify.

Very truly yours,

CLEMENT F. ROBINSON
Attorney General

54-HOUR LAW

October 18, 1929

Hon. Charles O. Beals,
Commissioner of Labor,
Augusta, Maine
Dear Sir:

I have your inquiry regarding Section 1 of the Fifty-four Hour Law; your question is whether the word "apportionment" must be so interpreted as to prevent an employer from operating his plant a long enough period in the day to make up for a shortening of several hours on the sixth day, the result being that he operates the plant in the evening of one day entailing on that day a working day of twelve, thirteen or fourteen hours.

It is my opinion that such a procedure is certainly contrary to the spirit and intent of the Act, and almost as certainly contrary to its express wording.

I do not believe that it is "apportionment" to lump the extra hours into one day.

The courts have defined the word "apportionment" as meaning "assigning in just proportion." Hearst v. Callaghan, 257 Pac. 648, 649. Also as meaning division into just proportions. Robbins v. Smith, 72 Oke. 1—of a devise in a will. Also as meaning a division into parts. Swint v. McClintock, 184 Pa. 202. The word does not necessarily mean a division into *equal* parts. Jones v. Holzapel, 11 Oke. 405.

I conclude that in order to have the apportionment there must be some division of the extra time over several days, at least where the extra time to be divided is an appreciable amount.

Very truly yours,

CLEMENT F. ROBINSON
Attorney General