

# MAINE STATE LEGISLATURE

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September 16, 1940

Colonel John W. Healey, Chief, Maine State Police  
Re: Status of Officers over Thirty-five Years of Age at Enlistment

We have been informed that during the administrations of General Hanson and Captain Towle, a few men were enlisted in the State Police who were over the age limit. In making application for positions they gave their correct ages, but in spite of the fact that the application blanks disclosed that they were over-age, they were appointed to positions. The problem which has been presented to this office is as follows:

1. Are these men enlisted to hold their positions in the State Police?
2. If they are not entitled to hold their positions, by what means may they be relieved from their duties?

I have examined applicable State statutes and have not found any law specifically defining the age limit of eligibility for membership in the State Police. The law does provide, however, that the Chief

"Shall make rules and regulations subject to the approval of the Governor and Council for the discipline and control of members of the State Police and for the examination and qualification of applicants for enlistment therein."

Pursuant to this provision of the statute, State Police Regulation No. 1, effective July 3rd, 1931, was promulgated by James W. Hanson, Chief, State Highway Police. Item 1 of this regulation provides that candidates for enlistment must be between the ages of 21 and 35, and contains the exception that the age requirement shall not apply to persons already members of the State Police and that the Chief may waive, in his discretion, physical defects that are not of a disqualifying nature in persons possessing technical qualifications.

You will note that by law, the regulations are to be made by the Chief, subject to the approval of the Governor and Council. There is no provision in the statute for notice and hearing on the adoption of the regulations, nor any method specified by law whereby the regulations may be modified, rescinded, amended or waived.

While the law does not state specifically that appointments made by the Chief must be approved by the Governor and Council, I assume that, as in the case of other appointees of the State government, the appointments were actually approved by the Governor and Council. If this is in fact the case, we find that those who have authority to make the regulations and who have made the regulations, have, by the act of appointment, made an exception to the regulations promulgated by them. In the absence of a statute to the contrary, I know of no reason why those who have authority to make regulations should

not at their discretion amend, modify, rescind or make exceptions to their own regulations. It therefore appears to me that these men are legally enlisted officers of the State Police.

Furthermore, it appears that with respect to these men, the regulation containing the specific provision that the Chief may waive physical defects that are not of a disqualifying nature in persons possessing technical qualifications, give added support to me opinion that they hold their positions legally. I have no doubt that over-age is as much a physical defect as is impaired hearing or eyesight. We are told in the case of these men that they are satisfactory police officers, and if this is in fact the case, we must assume that with the exception of the age defect, they did possess, and do now possess, technical qualifications for their positions.

If you accept the foregoing opinion with respect to the status of these men, it becomes necessary to answer the second part of the question presented, as it becomes unnecessary to remove them from office.

You will note that I have made no comment with respect to the wisdom of a policy of waiving regulations which have been formally adopted. It is my understanding that we are not asked to express an opinion as to policy, but merely as to the legal status of the incumbents.

John S. S. Fessenden  
Assistant Attorney General

JSSF:GH

I concur.  
Franz U. Burkett, Attorney General