

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

From:  
Frank I. Cowan, Attorney General

October 15, 1941

To:  
Marie J. Tibbetts, State Library

I have your query as to whether or not a member of the Executive Council is a State officer under the provisions of Chapter 4, Section 18 of the Revised Statutes.

In my opinion, he is such an officer.

As such, each incumbent in the office is entitled to a copy of the Revised Statutes, Session Laws, etc. issued during his incumbency in office, and such volumes so issued, since they remain the property of the State of Maine, are to be turned over to the successor in office.

Attorney General  
October 16, 1941

From:  
Frank I. Cowan, Attorney General

To:  
Henry P. Weaver, Chief, State Police

I have your memo of October 16th asking for a ruling in regard to Chapter 72 and Chapter 205 of the Public Laws of 1941.

Both of these acts are amendatory of Public Laws of 1939, Chapter 169.

Chapter 72 of the Laws of 1941 amends said Chapter 169 of the Laws of 1939 by striking out the words, "May" and "November" and inserting in their places the words, "April" and "October". This act was approved March 14, 1941.

Chapter 205 of the Laws of 1941 amends Chapter 169 of the Laws of 1939 by inserting between the second and third sentences of the second paragraph of Section 1 of Chapter 169 three new sentences. It further amends Section 1 by inserting an additional sentence between the third and fourth paragraphs of said section.

There are amendments to Section 2 of said Chapter 169, but those are not material in the present discussion. Said Chapter 205 was approved April 11, 1941.

Both acts took effect on the same day, to wit—July 26, 1941 by the provisions of Article XXXI of the Constitution of the State of Maine, adopted by the people, September 14, 1908, and proclaimed by the Governor to be a part of the Constitution on September 30, 1908, and which took effect on the 13th of January, 1909.

Both the said acts were introduced into the legislature in due course. Instead of combining them, the legislature saw fit to pass them individually. Inasmuch as Chapter 72 had not become the law, the amendments which appear in Chapter 205 were properly added to the original wording of Public Laws of 1939, Chapter 169. If the legislature had seen fit to combine the two bills, there would

have been no reason at all for passing Chapter 72 because all of Chapter 72 would have been included in Chapter 205. Inasmuch as under the present wording of the Constitution of the State, the two acts took effect at the same moment, there is no proper interpretation to be placed upon them other than to say that the legislature would not have solemnly passed two entirely inconsistent acts, one of which would have had the effect of repealing the other, without expressly calling attention to the fact that it was their intention to repeal the other.

The intention of the legislature is more clearly understandable by the fact that since 1933 the procedure has been used of setting out all amendments in black face type so that the reader can tell at a glance what part of the act is the amendment and what part is the original statute.

I am aware of the fact that in the case of *Stuart vs. Chapman*, 104 Maine 17, the court quoted approvingly its own language in the case of *Weeks vs. Smith*, 81 Maine 547, "No man should be required to hunt through the journals of a legislature to determine whether a statute, properly certified by the Speaker of the House and President of the Senate, and approved by the Governor, is a statute or not." This statement of the court may induce us to disregard the black face type as evidence.

But *Stuart* against *Chapman*, on pages 22 and 23, used the following: "In the case at bar the two statutes under consideration were approved upon the same day and went into effect the same moment of time."

There was considerable discussion of the fact that the signature by the Governor was the last legislative act and that there was no reason for saying that the two amendments discussed in that case did not take effect the same day, to wit—at the same moment. However, the case of *Stuart* against *Chapman* was decided on February 25, 1908. The amendment to the Constitution, providing that no act passed by the legislature, with certain exceptions, shall take effect until ninety days after the recess of the legislature passing it, was not voted on by the people until September 14, 1908 and did not take effect until the first Wednesday of January, 1909.

At the time of the decision in *Stuart vs. Chapman*, acts of the legislature took effect immediately upon signature by the Governor. Chapter 72 and Chapter 205 of the laws of 1941 did not take effect until ninety days after the adjournment of the legislature passing them. During that ninety days, the laws were incomplete in substance. They still had to pass the test of the ninety day period, at any time during which a referendum could be invoked suspending their operation or, if the referendum were sustained by the people at the polls, preventing them from ever taking effect.

Under the circumstances, the act of the Governor in signing Chapters 72 and 205 of the laws of 1941 may have been the last legislative act, but it was not the last act that could be applied to the bills. The people of the State had spoken since the decision in *Stuart vs. Chapman* and had set up a supplementary procedure which could veto the acts of the legislature and of the Governor. For the above reason, I feel that the argument concerning the signature by the Governor, which we find in the case of *Stuart vs. Chapman*, does not apply to the present situation.

The words of the court that the two statutes "went into effect the same moment of time", which we find on page 23 of the *Stuart vs. Chapman* opinion, seem to me to be the controlling words in our present situation. We can go on from those words and follow through the reasoning in *Stuart vs. Chapman* and find it will apply logically to the case we are considering.

On page 24, we find the court using the following language: "Force and effect can, and therefore should, be given to both amendments, and both must stand as statutes of the State. Section twenty-three reads, as thus amended by both statutes, with the words stricken out by chapter 131 and the words inserted by chapter 134. We apprehend that no man can have any doubt that this is precisely what the legislature intended to accomplish. The means it adopted were appropriate to the end, and we know of no iron rule of statutory interpretation which, under the circumstances of this case, must render its efforts abortive."

On the basis of the above reasoning, it is my opinion that both the amendments to Section 1 of Chapter 169 of the Public Laws of 1939 (those included in Chapter 72 of the laws of 1941 as well as those included in Chapter 205 of the laws of 1941) took effect and that the inspection of the automobiles shall be made during the months of April and October of each year.

FRANK I. COWAN

Attorney General

October 16, 1941

From:  
Frank I. Cowan, Attorney General

To:  
George E. Hill, State Tax Assessor

I have your letter of October 15th asking me to inform you to what extent, if any, your bureau is legally charged with the duty of issuing tax bills, receiving tax payments, taking steps for the collection of the same, including conduct of sales and forfeiture of real estate for non-payment of taxes.