

# 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

The Secretary of State is under the necessity of moving his Portland office immediately due to the fact, so I am informed, that the United States Navy is taking over his present quarters. He has arranged to lease certain property on St. John Street and corner of Danforth, which, in his opinion, is a good location, and he is prepared to move immediately.

I have approved the form of the lease but the lessor requires a certificate of authority in the Secretary of State to execute the lease for the State. I cannot certify that he has this authority, but I can certify that you have the authority.

Attorney General

January 29, 1942

From:

Frank I. Cowan, Attorney General

To:

J. A. Mossman, State Controller

I have been considering the wording of P. L. 1941, Chapter 325, Section 2 of the salary adjustment act. This law expressly uses the word "employees of the State government". Three times in the single sentence that makes up the body of the act the word employee occurs. In no place does the word "officer" or "official" occur.

There is a marked distinction between an officer and an employee. The Law Court of the State of Maine in Bowden's case, 123 Maine, page 363, speaking of a certain section of the Workmen's Compensation Act, uses this language:

"Primarily, it was intended for employees, as distinguished from officials, employees directly employed by our officials authorized to act for the State, or persons employed or in the service of any department without such official or authorized sanction."

Again, on Page 366, the Court says:

"In addition to the statutory definition of 'employee' it is well settled that an officer is distinguished from the employee in the greater importance, dignity and independence of his position, in being required to take an official oath and perhaps to give an official bond, in the more enduring tenure, and in the fact that the duties of the position are prescribed by law."

The New York court has defined employee and officer thus:

"An employee is one who works for an employer; the person working for salary or wage. The words apply to anyone who works, but usually only to clerks, workmen, laborers, etc., and but rarely to officers of a government or corporation."

Under the circumstances it is my opinion that the word "employee" as used in the statute, does not cover heads of departments nor, as a matter of fact, any elected or appointed official, but only persons employed as illustrated by the New York case cited.

Rather a surprising distinction between the apparent meaning of a word when used in two different sections of the same statute is to be found in the said Chapter 325 in regard to employees. In Section 2, the word employee is primarily used in its strict meaning. In Section 4, on the other hand, we have a provision for automobile mileage allowance. Inasmuch as privately owned automobiles are used by some employees of the State in all classifications, it is obvious that the word employee, when used in Section 4, includes every person regularly employed by the State. Therefore, a distinction, such as I have called attention to above, between employee and officer, does not, in my opinion, apply to said Section 4.

Attorney General

January 30, 1942

Honorable George J. Wentworth  
Councillor, First District  
Kennebunk, Maine

Dear George:

In reply to your query as to whether or not the County Commissioners may spend the county's money for advertising the county and its natural resources, the answer is, "No." The powers of the County Commissioners are wholly of the delegated type. They have no inherent rights to spend the money of the county except as authorized by statute, and there is no such statutory authority.

As you will recall, the County Commissioners biennially submit to the Legislature their detailed estimates as to expenditures for each of the following two years and the estimates have to meet legislative approval before they have the authority to spend the money. Any emergencies can be met through the issue of bonds up to \$10,000, but in my opinion advertising the county's resources would not be such an emergency.

Very truly yours,

FRANK I. COWAN  
Attorney General

February 11, 1942

From:  
Frank I. Cowan, Attorney General

To:  
George J. Stobie, Commissioner  
Fish and Game Department

*In re Archer L. Grover, Deputy Commissioner*

I have your memo of January 28th asking whether time spent by Archer L. Grover as instructor at the University of Maine will in any way help him toward receiving a State pension if he retires at the present time.