

MAINE STATE LEGISLATURE

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File

April 7, 1942

John S. S. Fessenden, Assistant Attorney General

Harry Putnam, Secretary to Governor

As you know, Mr. Whitney came to the Attorney General's office yesterday afternoon and, in the absence of the Attorney General, I attempted to be as helpful as I could. I recall that a few weeks ago the Attorney General stated that he would like to have me do certain utility work for him because he felt it would be necessary for him to devote considerable time to Civilian Defense matters. Since he apparently intends to take care of the Civilian Defense work personally, I hesitate to make suggestions which might be in conflict with the Attorney General's plans. However, as I reviewed the problem brought to us by Mr. Whitney and reviewed the controlling statute, certain ideas came to me which I suggest herewith for whatever they may be worth.

It seems to me that under Chapter 305 there are four distinct types of rules and regulations which the Governor is empowered to issue:

1. Under Section 1, rules and regulations applicable generally to all persons in the State, having the force of law.
2. Under Section 2, rules and regulations for the government of the Maine Civilian Defense Corps, applicable to the Corps and its members.
3. Under Section 4, rules and regulations with the advice and consent of the Council to control contracts in connection with the carrying out of the purposes of the Act.
4. Note the second paragraph of Section 2 provides for "rules and regulations" for the holding of blackouts or test blackouts. I would think that normally, this provision might better have been included in Section 1 rather than Section 2, as I would suppose that it would be preferable to have such an Order carry the weight of law. Perhaps a general regulation to cover the holding of blackouts should be drafted.

While Section 5 carries a heading calling for regulations, the Section itself merely calls for an Executive Order, but note that when the Governor re-directs the activities of a Department or Agency of the State, advice and consent of the Council is necessary.

April 7, 1942

My suggestions follow:

1. While it has long been the custom and perhaps the law that the Governor should act by Executive Order, it seems to me that in acting under Chapter 305 it might be well, while heading the document "Executive Order", to nevertheless state within the document words to this effect: "The following rules and regulations are hereby promulgated by me."

2. It is a cardinal principle of law that delegated authority may not be delegated. It seems to me essential, therefore, that any "rules and regulations" issued under the authority of Section 1 of Chapter 305, must be issued by the Governor. This is essentially so because they have the force of law and apply to all persons in the State. There should be no question as to the general applicability of the "rules and regulations" and it is absolutely essential that they be published in the State paper for three consecutive days.

3. It seems to me that "rules and regulations" promulgated by the Governor under Section 2 of Chapter 305, are fundamentally administrative rules and regulations. I would suggest that rules be issued setting up the Defense Corps, prescribing its duties in general terms, giving its Director authority to issue orders to its members for the carrying out of its duties and the regulation and conduct of its affairs and delegating (statute as to this Section gives the Governor authority to delegate) to it authority to issue instructions to the people of the State for their conduct during the war. I do not see why it should be necessary for specific detailed instructions to be issued by the Governor except in such cases as it is desirable that they have the force of law.

In such part of the foregoing as pertains to the issuing of orders or instructions by the Defense Corps, the Governor could, if he so desires, reserve the right of approval to himself. This, of course, would be a matter of Executive discretion.

I am attaching hereto, a specimen of what I have in mind which could be issued under Section 2 of Chapter 305. This has been done hurriedly and probably does not cover the entire ground. It is simply an effort to demonstrate my line of thinking.

Assistant Attorney General

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