

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

April 22, 1943

To:

William D. Hayes, State Auditor

Auditor

From:

Frank I. Cowan, General

Attorney General

Salary Authorizations and Certifications

I have at hand a copy of your memorandum of March 5th. I am giving you a reply which may be subject to modification on further study of the subject.

R. S. Chapter 125, section 36, was a piece of legislation doubtless designed to go some distance in correcting inequalities in salaries and wages and to eliminate favoritism. These results, if the sponsor of the legislation sought for such results, were not accomplished, and in 1937 the Personnel Law was placed on our statute books. I heard the proposed Personnel Law discussed a great deal during the years prior to its enactment. One of the arguments in favor of the legislation was that personal favoritism and politics were rampant and that there needed to be a system adopted which would provide for uniformity and would protect the State from the employment of incompetents and at the same time protect competent employees in their positions. I believe that the Personnel statute is now doing a great deal of good along that line, although during the first few years we had the law, it certainly did not accomplish any very meritorious purpose.

I have often wondered why Section 7 was written in its present form. It seems to me that there are at least two distinct classes of employees, and perhaps more than two, that are grouped together in that section.

If we tried to use R. S. Chapter 125, section 36 as a boundary for all of the employees set out in Section 7, we should find ourselves in difficulties immediately. For instance, in paragraph 9 we find the following grouping: "Officers and employees of the University of Maine, of the several State Normal Schools, and of the unorganized territory school system." Obviously, the Governor and Council have no authority to fix compensation for officers and employees of the University of Maine.

The compensation of employees in paragraphs 1 and 2, some of those in paragraph 4, all of those in paragraph 5 and some in paragraph 3 is set by the legislature.

It is true that R. S. Chapter 125, section 36 applies only to "assistants, clerks and other employees" and probably the word "employees" is used here in a narrow sense and applies to persons whose tenure in office is dependent on the will of a department head. However, no such distinction is made in P. L. 1937, Chapter 221, section 7.

I am forced to the conclusion that we cannot apply R. S. 125, section 36, to P. L. 1937, Chapter 221, section 7 and have the latter section fully covered or properly bounded. I shall be very glad to discuss this matter further with you and with Mr. Earle Hayes to see if we can't break down Section 7 and decide whether certain of the employees of the State referred to in these thirteen paragraphs cannot be brought within the provisions of R. S. Chapter 125, section 36.

FRANK I. COWAN
Attorney General

April 30, 1943

To:

Harrison C. Greenleaf, Comm'r

Institutions

From:

Frank A. Farrington, Deputy

Attorney General

Employment of State Prison Inmates

In your pencil memorandum of April 29th, you ask whether under existing State laws inmates of the State Prison may be employed to work in Searsport at unloading fertilizer.

Section 331 of Chapter 1, P. L. 1933 provides in part as follows: ". . . and the letting to hire of such of the convicts as the department deems expedient . . . shall be made with the warden, in the manner prescribed by the department."

Considered alone this section seems to permit general "letting to hire" of convicts within its terms.

However, Section 322 of Chapter 1, P. L. 1933 locates the State Prison ". . . in which convicts, lawfully committed thereto, shall be confined, employed, and governed as provided by law." Under this section it seems clear that employment is to be at the State Prison only.

Section 325 of said Chapter 1 permits employment of prisoners "in the construction or improvement of highways or on other public works" under certain arrangements and under certain rules and regulations, and is an exception to the general rule that employment must be at the prison, as provided in Section 322.

Section 331, above mentioned, must be considered in connection with sections 322 and 325 and on this basis Section 331 is limited by Section 325 to employment of prisoners on "public works" where the employment is to be outside the Prison. The type of employment under discussion cannot be considered as on "public works".

It is, therefore, the opinion of this department that existing laws will not permit inmates of the State Prison to be employed on the work concerning which you inquire.

FRANK A. FARRINGTON
Deputy Attorney General