

# MAINE STATE LEGISLATURE

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August 5, 1943

Governor Sewall

John G. Marshall, Assistant

Attorney General

Harvard E. Tinker

In response to your request for a ruling on the status of the above-named individual, the following is herewith submitted:

#### Facts

The record shows that Harvard E. Tinker was sentenced at the September term, 1939, in the Superior Court of the County of Hancock in the State of Maine to the State Prison, on an indictment alleging a crime against nature. The sentence provided for imprisonment for 4 to 8 years. The provisions for such a sentence appear in Section 25 of Chapter 147, R. S. 1930.

Although there are other sections of other chapters providing for punishment for the doing of immoral acts or practices, Section 3 of Chapter 135, R. S. 1930, is the only section specifically providing for the crime for which the respondent, Tinker, was indicted and sentenced.

Section 25 of Chapter 147, R. S. 1930, provides for a maximum and minimum term in all cases where a person shall be punished by imprisonment in the State Prison. The maximum sentence shall not exceed the longest term fixed by law for the punishment of the offense for which the person sentenced is convicted, and the minimum sentence shall not exceed one-half of the maximum term of imprisonment fixed by statute and shall not be less than six months in any case.

Was the sentence in the Tinker case in accordance with existing law on the date of the sentence, September, 1939? The answer is yes. The Public Laws of 1939 contained Chapter 294 which provides that Section 26 of Chapter 147 is amended by the provision that Sections 25 to 42 of Chapter 147 shall not apply to any person convicted of an offense the only punishment for which prescribed by law is imprisonment for life. The offense on which the respondent, Tinker, was sentenced was provided for under Section 3 of Chapter 135 and carries a punishment by imprisonment for not less than 1 year, nor more than 10 years. Furthermore, Chapter 294, P. L. 1939, provided that Sections 25 to 42 of Chapter 147 (providing for maximum and minimum terms) would not apply to any person convicted of an offense under Sections 16, 23 or 31 of Chapter 129, or under Section 6 of Chapter 135, R. S. 1930. Persons convicted or sentenced under these sections shall not be entitled to the maximum and minimum provisions of Chapter 147 of the Revised Statutes; but none of these sections of the chapters revised apply to the offense of which the respondent, Tinker, was convicted.

The only other provision of our law which the respondent, Tinker, could have been sentenced under as the indictment set forth, might have been Section 25 of Chapter 129, which is not included at all in the amendment of 1939 referred to as Chapter 294.

Consequently, it is my opinion that the respondent, Finley,  
could apply to the Fair Labor Board in accordance with Chapter 153 of  
the Laws of 1933.

Respectfully,

John S. Hayshull  
Assistant Attorney General

JSH:0

no