

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

The language of the first sentence in Section 4 is considerably involved and probably it is far from being grammatically correct. However, the meaning is not difficult to deduce. The sentence provides for petitions to be filed with the Commissioner; in each case, the notice must come to him before September 1st. If he has received such petition before September 1st, or, if he has not received such petition, then upon his own initiative, he may hold hearings on the subject matter at such times and places as he may select, save that the time must be "during the period from September 15 to December 14."

Therefore, although it is too late for you to receive a "petition," because of the provision in the statute about the time of filing, you are expressly authorized by the statute to act on your own initiative.

FRANK I. COWAN

Attorney-General

September 23, 1943

William D. Hayes, State Auditor

Audit

Chapter 131, P. L. 1943

You have inquired about Chapter 131, P. L. 1943, which amended P. L. 1939, Chapter 206 by striking out "July" "Beginning July 1, 1940" and provided for renewals, etc. Inasmuch as Chapter 131 did not become effective until July 9, 1943, what effect would this have on licenses issued in accordance with the law of 1939 and the fees therefor?

Opinion

Although the 1943 law was in the form of an amendment, it nevertheless repealed the provision in the 1939 law providing for the period covered by the license then. There was no saving clause to provide for unexpired licenses, so there could not be any implication that such was the intent by the legislature. See *Staples v. Peabody*, 83 Maine 207, and *State v. Pulsifer*, 129 Maine 423.

"All the privileges permitted by a license, and all the protection afforded thereby, although yet unexpired, are generally cancelled by repeal." 37 Corpus Juris 214, paragraph 68.

Our Supreme Court wrote in *State v. Pulsifer*, 129 Maine 423, "A mere license by a State is always revocable." The principle of law is clear that the State could here revoke the permission which it had granted. It is quite true that the legislature in the later act, which provided for a different method of licensing, does not expressly provide for the revocation of licenses outstanding under the former. Such express declaration is not however necessary, if it is obvious that such is the intent. The provisions of the later law in so far as they govern the issuing of licenses, are inconsistent with the provisions of the former act and obviously were intended to supersede them. The later act provides in express terms for the repeal of all acts or parts of acts inconsistent with it; and, even though this provision were absent, there would be a repeal of this part of the act by implication.

Consequently, the osteopaths in Maine must have been obliged to become licensed on or before July 1, 1943, and to pay therefor the fee

prescribed by statute in effect at that time. No provision of the law of that date or in the act passed in 1943 permits a lesser amount to be paid for a fraction of a year; but on or before January 1 of 1944 and continuing thereafter until the law is changed, the osteopaths in Maine will be obliged to pay the license fees for either a new license or a renewal in accordance with Chapter 131. The use of the word "renewal" in Chapter 131 does not change or modify anything hereinbefore written.

JOHN G. MARSHALL
Deputy Attorney-General

September 23, 1943

Harrison C. Greenleaf, Commissioner Institutional Service

In answer to your communication of September 21st relative to the use of some of the inmates at the South Windham Reformatory for employment outside the Reformatory grounds and particularly for the use of their labor in harvesting and processing of corn in the Gorham area, it would appear that the following things should be considered as necessary before affirmatively adopting a program of this kind.

First, in view of the fact that the last legislature reported unfavorably on a proposal to permit the usage of this kind of labor in the State, and the fact that there is no express provision in our law for using the inmates of penal institutions for labor in private undertakings, it would appear to be absolutely necessary to have an Executive Order under the War Powers Act by the Chief Executive of the State, covering this situation.

Secondly, there are certain constitutional limitations relative to servitude, and to obviate any violation here in such an undertaking, it will be absolutely necessary to have a written declaration by any inmate engaged in this endeavor, stating that he has volunteered to do the work and that he has been in no way forced, or ordered, to do so as a part of his penal service, and that it was in no way against his will.

Thirdly, any inmate or inmates permitted to work under such a program inaugurated pursuant to the foregoing suggestions should at all times be under the constant jurisdiction and supervision of an authorized guard of the institution in which these individuals are legally confined.

FRANK I. COWAN
Attorney-General

September 27, 1943

William D. Hayes, State Auditor Audit

*Cancellation of Bonds of State Employees and Officials leaving the
Employment of the State*

After a conference with Mr. Cowan, the Attorney-General, about the method of handling the cancellation of bonds of State employees and officials, the following is the recommendation of the Attorney-General's Department to all Departments.