

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

February 15, 1944

Richard H. Armstrong, Esq.
Office of Price Administration
Augusta, Maine

Dear Richard,

With relation to your inquiry as to whether our municipalities may, by ordinance or by-law, adopt maximum price regulations and enforce the same as an aid to the federal regulations now enforced by OPA, I have given some thought to the problem and I am of the opinion that our municipalities and towns possess no power to enact any ordinances or by-laws excepting with relation to the subjects contained in the Revised Statutes and enumerated under Chapter 5, Section 136. The first sentence of this section clearly demonstrates the limitations that have been put on the rights of a municipality or town to provide by-laws or ordinances. The language is as follows:

"Towns, cities, and village corporations may make by-laws or ordinances, not inconsistent with law, and enforce them by suitable penalties, *for the purposes and with the limitations following.*" (Emphasis mine.)

In *Alley v. Inhabitants of Edgecomb*, 53 Maine 446-448, where a question was raised as to the right of towns to grant or to raise money, the Court there said:

"Beyond question or controversy the right of towns to grant or to raise money depends upon authority derived from some statutory provision. Like other corporations they have no powers, that are not either expressly granted or necessarily implied from such as are granted, to enable them to discharge the special functions for which they were created and such duties as are by law imposed upon them. *They have no inherent right of legislation* like that of the State, but act only by a delegated power which must be measured by the terms of the grant." (Emphasis mine.)

It would also appear that the seventeen sub-sections which follow the opening sentence of Section 136 which I have quoted, have been enacted at different times as the legislature found it necessary and convenient to broaden and extend the powers of municipalities. This is clear from the following quotation from *State v. Borden* in 93 Maine 73-77 (1899) where the Court said:

"The legislature of this state has by various enactments at different times given to municipalities the power to adopt by-laws in regard to a large number of matters, all of which different enactments have been condensed into c. 3, §59, of the present revised statutes." (R. S. 1883.)

In *State v. Bunker*, 98 Maine 387-389, where the Court discharged a respondent who was charged with having violated an ordinance of a town which prohibited non-residents from taking clams upon a shore within the town of Lamoine, the Court said:

"It is equally clear that without legislative authority the inhabitants of a town have no power to adopt by-laws or regulations controlling the subject of sea-shore fisheries."

I enclose galley proof which is now being prepared of the next revision and which incorporates all the legislative amendments to date with regard to additional powers conferred upon municipalities since the last revision in 1930. You will notice that under none of these provisions can a municipality adopt a by-law or ordinance dealing with the subjects herein referred to.

Since the municipal officers have no inherent powers of legislation and the right to legislate rests solely with our legislature, I believe that the legislature would be the only body that could enact legislation on the subject.

Very truly yours,

ABRAHAM BREITBARD

Deputy Attorney-General

February 17, 1944

Mr. X

Dear Sir:—

I have your letter of February 7th in regard to a pensioner of the State serving in the legislature. This office has never issued a formal opinion on the subject, although in correspondence and in discussions with the Governor and other State officials we have expressed a strong feeling that it is contrary to public policy.

There are certain retired State employees who are receiving an annual stipend as a result of contributions made to Retirement Systems. Such persons are receiving their stipends as a matter of right and not as a matter of grace. In your particular case, as I recall, you were not a contributor to the Teachers' Retirement System, and the pension you are receiving is a pension pure and simple, set up by the favorable vote of the Governor and Council and subject to revocation by the same source. In connection with persons in your situation my very strong advice has been against taking a chance on getting themselves into a political situation where a hostile Governor and Council might stop the pension.

Very truly yours,

FRANK I. COWAN

Attorney-General

February 17, 1944

William D. Hayes, State Auditor

I have your memo of February 14th in regard to salaries of the superintendents of the thirteen State institutions. Chapter 300 of the Public Laws of 1943, apparently makes no fundamental change in sections 3 and 4 of Chapter 223, P. L. 1939, except that it eliminates the fifth-wheel "Director of Institutional Service." Otherwise, it seems to be purely for the purpose of getting rid of redundancy.

A reading of the whole Act shows no apparent intention on the part of the legislature to take the employees of the institutions away from the protection of the Personnel Law. The general statute (P. L. 1937, Chapter 221, Section 6) provides that "The classified service shall con-