

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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-

sist of all persons holding offices and employments now existing or hereafter created in the state service, except persons who are holding or shall hold offices and employments exempted by section 7 of this act." Section 7 of the statute gives in detail such persons as shall be in the unclassified service, and the enumeration of these persons tells exactly just which ones the legislature intended to eliminate. The intent of the legislature is made more clear by the provisions of P. L. 1943, Chapter 11, which takes wardens of the Department of Inland Fisheries and Game out of the unclassified service. We are therefore justified in saying that the legislature will not take any group out of the classified service and place them in the unclassified service without express language to that effect.

That does not mean, however, that the Commissioner of Institutional Service must accept anybody that the Personnel Bureau sends to him. P. L. 1941, Chapter 300, which says, "Said commissioner shall have the power to appoint . . . such other employees as shall be necessary for the proper performance of the duties of said department," was enacted with full knowledge of the specialized character of many of those duties and the necessity of relying on the judgment of the Commissioner in selecting employees. In other words, the prospective employee must still pass the test of the Personnel Bureau, but he or she must pass the further test of receiving the approval of the Commissioner before he can be employed in that particular activity.

Such being the nature of the situation, the State Personnel Law must apply to the classified employees of the institutions. (See P. L. 1937, Chapter 221, Section 10.)

Whether or not the institutional heads are within the provisions of the State Personnel Law is a matter on which I do not wish to comment without further information. It has been consistently held that persons appointed for definite terms should be classified as Bureau Directors under Section 7 of the Personnel Law, so as to be in the unclassified service. Unless there is some strong reason for interpreting the law otherwise, said reason being found in the facts with regard to each particular case, I shall continue in the opinion that "institution heads" are to be regarded as "Bureau Directors."

FRANK I. COWAN

Attorney-General

February 17, 1944

Honorable Robert Hale
House Office Building
Washington, D. C.

Dear Bob,

I have seen your letter of February 7th in regard to the press release of January 31st about the Maine Absent Voting Law in its application to soldier voting. You are, of course, correct in the general assumption that an Executive Order which would attempt to amend a statute would be in contravention of the State Constitutional provision to the effect that no one of the three branches of the government shall exer-