

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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-

cise any of the powers of the other two branches. However, as you are well aware, the old theory of absolute separability of governmental functions has, over the past hundred years, been greatly modified because of the practical necessities that at times arise.

P. L. 1941, Chapter 305, is purely a war measure. If modifying the registration laws to permit of a soldier's voting is something indissolubly linked to the "welfare" of the people of the State of Maine, and if it will assist in "coöperation with the federal government," then it is within the provisions of that statute. My first reaction was that there was such a relation and under the circumstances I felt no hesitation in approving the suggestion in regard to the modification of registration machinery as a purely temporary war measure.

Mature consideration of the matter has, however, shaken that opinion. This is an election matter. Our regard for the independence of election machinery from all executive interference is so tender that I now find I can't bring myself to advise the Executive that it is proper for him to do the act which the legislature certainly intended that he should. Even if I did so advise, it is probable that some defeated candidate would take the matter to court, and I feel that the court might very well say that even though the Civilian Defense Act by its plain words and meaning authorized the Governor to do this thing, nevertheless, even as a war measure, his action under that attempted authorization would be in contravention of public policy. . . .

FRANK I. COWAN

Attorney-General

February 17, 1944

Harold I. Goss, Secretary of State

Subject: Registration Fees for Trucks

I have your memo of February 8th asking for an interpretation of certain provisions of R. S., c. 29, sec. 57, as amended, which reads as follows: "Over 11 tons and not over 12 tons, \$275.00" and "12 tons and over, \$300.00."

In view of the wording of the whole schedule, it is apparent that the language "12 tons and over" was an oversight and was intended to read "over 12 tons." Therefore a carrying capacity of anything over 11 tons and up to and including 12 tons calls for a fee of \$275.00. 12 tons plus 1 oz. requires \$300.00.

FRANK I. COWAN

Attorney-General

February 18, 1944

E. E. Roderick, Deputy Commissioner of Education

Subject: Membership in Maine Teachers' Retirement Association

With reference to your inquiry of February 1, 1944, it is the opinion of this department that Chapter 198, Section 3, of the Public Laws of 1943 is very plain and unambiguous, leaving no room for interpretation. This provides that "Any member of the Retirement Association who has been a member for more than one year and who is actively