

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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

engaged in teaching," upon entering the military or naval service shall have the benefits of the Act and during such service, in addition to its own share, the State shall contribute such amounts as the member would have been required to contribute, if he had been teaching within the State, etc. Thus, in order to have the benefits of this section, one of the requirements is that he shall have been a member for more than a year, and members who have been such for less than that period cannot have the benefits of this law.

The subject of the inquiry had been a member for approximately five months before entering the service, and you ask whether his membership can be made retroactive to commence as of the date when he began teaching, some two and a half years before he became a member. We find nothing in the statute which permits this and hence the question must be answered in the negative.

ABRAHAM BREITBARD

Deputy Attorney-General

February 18, 1944

Mrs. Mildred Akin
36 Davis Street
Old Town, Maine

Dear Madam:—

This office has previously ruled, and adheres to the same ruling, that under the Revised Statutes, Chapter 13, Section 6, Paragraph VIII, the polls and estates of Indians are not taxable.

However, in case an Indian votes, his estates are taxable.

Very truly yours,

ABRAHAM BREITBARD

Deputy Attorney-General

February 18, 1944

Harrison C. Greenleaf, Commissioner of Institutional Service

In answer to your memo of February 16, 1944, relative to Section 11 of Chapter 131 of the Revised Statutes: You inquire if this statute applies to members of the State legislature and whether they are State officers within this section.

I have looked through the files of this department and find that apparently this has been an ever-recurring question. On March 23, 1931, the late Chief Justice Pattangall wrote to the Attorney-General, Clement F. Robinson, as follows:

"Section 11, Chapter 131, Revised Statutes 1930, reads, 'No trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the state,' etc.

"I hardly see how a member of the legislature could be said to be either a trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the state. I am not even sure that this section applies to members of the Governor's Council. The wording is quite different than I supposed."