

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

Section 57 is as follows:

"The governor and council may require any officer who by law gives bond to the state to give a new bond when they consider it necessary; and when it is given, the obligors in the former bond are discharged from liability thereon for acts and defaults after the acceptance of the new one; and if such officer does not give a new and satisfactory bond within the time specified by the governor and council, his office becomes vacant, and shall be filled 'as provided by law."

The Governor and Council are here empowered to require a new bond when in their judgment they think it is necessary and the statute then operates on the former bond, releasing the surety from future liability. Non-compliance also creates a vacancy in the office and it may be filled anew.

No such provisions are to be found in Chapter 320. No provision is there made for the release of the surety nor the giving of a new bond for that matter, nor the creation of a vacancy if the bond is not furnished. It provides there only that bonds may be increased and decreased; the cancellation may be by the surety company only.

If Section 57 has been repealed, what would happen if a surety company of a bond given prior to July 9, 1943, should become insolvent or receivership be imminent? No new bond then could be required, as there would be no law or authority for it, and by the same token the official or employee could refuse to give a new bond, and yet there would be no vacancy to fill as contemplated by Section 57.

I do not believe that the legislature intended any such absurd result. The purpose of the new law was to strengthen the laws relating to bonds, rather than to weaken them.

Under this provision, then, the Governor and Council may require a new bond, and when it is given, the surety on the former bond is released from defaults thereafter occurring.

Returned herewith is bond of Guy R. Whitten, Deputy Insurance Commissioner.

ABRAHAM BREITBARD

Deputy Attorney-General

July 27, 1944

William D. Hayes, State Auditor

Audit

I have your memo of July 18th, in regard to the salaries of the Chief Engineer and Bureau Chiefs of the Highway Department.

As far as concerns the employment of the Chief Engineer, the statute expressly provides how he shall be selected and employed. There is no question but what he belongs in the unclassified service, although the position does not fit into any of the fifteen types enumerated under §7, in spite of the fact that §6 states that the employees are in the classified service "except persons who are holding office or employment excepted by section 7." The reason for this opinion is that persons in the classified service are employed on the basis of examinations, and no person in the classified service can be appointed except in accordance with the rules of the Personnel Board. Obviously a statute which

provides that the Highway Commission itself shall select, and with the approval of the Governor, shall appoint a Chief Engineer, does not contemplate interposition of authority on the part of Personnel Board.

A different situation arises in connection with the Superintendent of the Highway Garage, Superintendent of Maintenance, Chief Construction Engineer and Chief Bridge Engineer of the Highway Department. P. L. 1941, c. 14, uses the language "bureau directors," and Paragraph (3) of §7 of the Personnel Law says that "bureau directors" are in the classified service. However, in examining the statutes I find no provision for any "bureaus" or "bureau directors" in the Highway Department. I find bureaus in connection with the State Library, and bureaus in connection with the Welfare Department, and we must assume that the words "bureau directors" which operate in the Personnel Law apply to the bureaus which are established by law. The fact that some department head may have called some division of his department a bureau cannot make it such. Therefore, in my opinion, the superintendents above enumerated fall in the classified service under the Personnel Law.

FRANK I. COWAN
Attorney-General

July 27, 1944

Harold I. Goss, Secretary of State

I have your query of July 26th for further interpretation of Chapter 157, P. L. 1943.

I believe that the proper interpretation of the statute is that if the renewal of a license has been interrupted by military service, the time during which the man or woman has been in the service shall not be counted provided the service started not later than 1941. If the applicant is in uniform and shows on the face of the application that not later than 1941 he had an operator's license, you may presume prima facie that renewal has been interrupted by such service.

As the opinion that has been issued applies to cases where an operator's license has been held as recently as 1941, which is one of the "3 preceding years," it is unnecessary to make any further interpretation on the matter of waiver of examination.

FRANK I. COWAN
Attorney-General

July 27, 1944

J. J. Allen, Controller

Maine Development Commission

I have your memo of July 21st. You asked two questions:

1. Can the Commission delegate authority for approval of vouchers to its Executive Secretary?

Answer. I see no legal objection to such delegation. As a practical matter, the Commission may wish to set a limit within which the Executive Secretary can approve vouchers. If such a limit is set, vouchers for larger amounts should be approved by a quorum of the Commission.

2. Must the State Controller write his approval on each voucher?