

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

June 4, 1947

To Lester M. Hart, Col. AGD, Ret., Assistant Adjutant General
Re: State Employees as Members of Military & Naval Reserves

Referring again to your letter of April 11, 1947, in which you state that your office has been informed that an employee of the State of Maine has been ordered to duty as a member of the USNR:

The point in issue deals with his absence as a State employee, and the question is whether he comes under the provisions of Section 80 of Chapter 12, R. S. 1944. You call my attention to the language of the statute, which reads, "military and naval reservists," and you further comment that at the present time Maine has no Naval Reserve; there has been none since World War I, and you state that you desire information as to whether or not the Naval Reservists referred to in the above mentioned paragraph of this section were intended to include members of the Naval Reserve of the United States. You further suggest that the Naval Reserve is wholly under federal control and is not among the forces subject to the orders of the Governor of the State of Maine or any other State.

I have had one of my Assistants trace the history of Section 80, and it is the opinion of this office that officials and employees of the State of Maine who are members of the National Guard or other authorized State military or naval forces or organized Reserves of the United States Army or organized Reserves of the United States Navy are entitled to leave of absence from their respective duties without loss of either pay or time for all days on which they are engaged in organized reserve training duties or authorized training mobilization when ordered or authorized either by the Governor of this State or under the provisions of National Defense Acts.

It is our opinion that the second paragraph of Section 80 of Chapter 12, R. S. 1944, about which you inquire in your letter, applies only in peace time in connection with training duties. Military leave in time of emergency or war, under circumstances whereby the official or employee of the State goes on military leave, so that his employment relationship with the State is terminated for the time being, is an entirely different situation. We opine that the statute referred to applies solely to the situation where an official or employee is ordered to temporary training duties, such as two weeks during the summer months. Under these circumstances his employment with the State does not in fact terminate, and he is entitled to leave of absence without loss of pay or time.

RALPH W. FARRIS
Attorney General

June 6, 1947

To H. A. Ladd, Commissioner of Education

Your memorandum of May 13th to the Attorney General has been referred to me. The subject has reference to the question whether a town may enter into a long-term contract to rent a building to be used for school purposes, the rental to include an amount which would amortize the investment in the building.

The facts, as they appear, are that a resident of the town would be willing to construct a building costing \$100,000, using plans provided by the Department of Education, and that the town is to agree to rent the building for a 30-year period. The town, at the end of said period, is to own the building, apparently having by that time paid the total cost of construction thereof. You do not say whether the building is to be constructed on land owned by the town.

While a town might, in carrying out the obligations imposed on it by statute to provide schools and school buildings, lease buildings for such purposes upon a payment of an annual rental, a town may not by this method circumvent, or attempt to do so, the constitutional limitation of debt or liability to be created by it. A contract by which it creates a liability in excess of its debt limit is illegal and void.

It would seem that here is not a mere hiring by the town of buildings to be used for school purposes at an annual rental, but rather a contract to purchase, which would create an obligation on the town for a substantial sum of money payable in future annual instalments. Calling it a lease and rental would be form only and would not represent the true nature of the contract. Thus, the question would arise whether its present indebtedness and the limitation on its indebtedness would authorize it to enter into such a contract. If such a contract would be for an amount in excess of the limitation on its indebtedness, the contract would be void.

ABRAHAM BREITBARD
Deputy Attorney General

June 18, 1947

To David H. Stevens, State Assessor

The department acknowledges receipt of your memo of June 9th. You inquire whether, under Chapter 88 of the Revised Statutes of 1944, Sections 168-175, inclusive, a service station selling gasoline may sell from any tank, container or pump gasoline under a trade name or symbol of his own, although the gasoline dispensed from said equipment is that of a well-known refiner or manufacturer which advertises its product under the name adopted by it.

I am of the opinion that under Section 168 of said chapter, such practice would not be permissible. This section reads as follows:

“It shall be unlawful for any person, firm or corporation within this state to store, sell, distribute, transport, expose for sale, or offer for sale, distribution, or transportation any internal combustion engine fuels, lubricating oils, or other similar products in any manner whatsoever so as to deceive or tend to deceive the purchaser as to the nature, quality, and identity of the product so sold. . .”

While a dealer may adopt a trade name to conduct his service station and do business under that name, he cannot use that name on his pumps or other dispensing equipment with the idea of conveying to the buyer that the gasoline so sold is of that name or manufacture; but he must identify the gasoline sold and dispensed with the true name of the manufacturer and the trade name or trade mark adopted by such manufacturer.

Any other course would be practicing a deception, within the meaning of this act, on the purchaser.

ABRAHAM BREITBARD
Deputy Attorney General