

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

Following the war, the States through concerted effort, after a long and somewhat bitter struggle, secured the return of the employment service to State operation, fully anticipating that each State would be required to appropriate a sum of money, as before, as its share in the cooperative program. In Maine the sum set by law (see sub. II, Sec. 7, Chapter 430, P. L. 1949) was annually appropriated in anticipation of the return of the employment service to obviate any possibility of the necessity of calling a special session of the legislature to appropriate the sum required to qualify the State to participate in the program.

Upon the return of the employment service and as a result of some action at the Federal level about which I have no information, Federal authorities did not require the State to allot and use the sum in controversy, but it was understood that they (the Federal authorities) might at any time do so and still had such authority. The appropriation being for the purpose of complying with Federal requirements and the requirement not having been imposed, there is no purpose consistent with the provisions of the Employment Security Law for which the sum should remain continuously available to the commission. The amount appropriated must therefore of necessity lapse, as in the previously mentioned instance.

I do not feel that it is within my province to express an opinion as to propriety of bookkeeping or how the matter should be handled by the commission in collaboration with the Department of Finance and the State Auditor's department, so long as the result is as stated above.

In your memorandum you ask, "Furthermore, is there any way that the law could be corrected so that we would not run into this incident in the future?"

If, at the Federal level, the law has been amended so that the administration can no longer require an appropriation by the States, I would suggest that the second sentence of subsection II, Section 7 of Chapter 430, P. L. 1949, and the first two words of the next sentence be repealed and that biennially no appropriation be requested.

If the Federal law has not changed and it is still possible that the State would be required to contribute State funds to the program, I would recommend that the appropriation bill state that the sum appropriated is to become available only upon the contingency of a demand by competent Federal authority that the amount be allotted and used.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 12, 1950

To Honorable Frederick G. Payne, Governor of Maine
Re: Term of Office, Board of Registration of Optometrists

By Chapter 333 of the Public Laws of 1947 the term of office of the Board of Optometry was changed from three years to five years. In making this change the legislature prescribed:

"They shall be appointed for terms, as the terms of the present members expire, so that eventually the term of one member shall expire each year,

and each shall hold office for a term of five years and until his successor is appointed and qualified.”

In presently making appointments to the board, as the terms of the members expire, it is my opinion that you should make your appointments for such terms of five years or less as will eventually result in the terms of the membership expiring one in each year.

JOHN S. S. FESSENDEN
Deputy Attorney General

July 17, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Elevator Inspection Frequency

I acknowledge receipt of your memo of July 14th, in which you call my attention to Section 99-H of Chapter 374, P. L. 1949, the second paragraph, which you quote as follows: “to maintain a certificate in force either a State elevator inspector or an authorized elevator inspector shall inspect every passenger elevator every 6th calendar month, and every freight elevator, every 12th calendar month . . .”

You state in the second paragraph of your memo that the Board feels that such infrequent inspection cannot assure the safety which the law is designed to provide, and has therefore adopted a rule that passenger elevators shall be inspected 4 times a year and freight elevators twice a year.

You further state that the members realize that they could not revoke a certificate under these conditions, but if an elevator was in such a state of disrepair that it was unsafe and created a menace, under the fourth paragraph of this section the conveyance could be taken out of service immediately and a condemnation card posted.

Upon this statement of law and fact you raise the question: “Does the Board have the authority to adopt such a rule and, if adopted, can we require inspection in conformity to the rule?”

In reply to your question I will say that in my opinion the Board can require inspection at any time it may deem necessary. It appears to me from the language of the statute which you quoted in paragraph one of your memo that it is mandatory that passenger elevators be inspected twice a year and freight elevators once a year. This statute makes it mandatory that elevators be inspected as often as prescribed therein, but it does not prevent the Board from having more frequent inspections, if deemed necessary to protect the public.

RALPH W. FARRIS
Attorney General