

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

May 21, 1951

To Roland H. Cobb, Commissioner of Inland Fisheries and Game  
Re: Penobscot Fishway Patrol

Under date of May 17, 1951, the Deputy Commissioner of the Department of Inland Fisheries and Game requested the opinion of this office as to whether the Commissioner has the authority to assign the Penobscot fishway patrol to various wardens whose normal districts include the various fishways along the Penobscot River, or must assign an individual whose principal function it will be to perform this patrol duty.

We have examined the history of the legislation calling for a fishway patrol on the Penobscot River and have found that the Act relative thereto was first passed in 1935, being Chapter 174 of the Public Laws of 1935. The Act reads as follows:

“The commissioner of inland fisheries and game shall establish a fishway patrol from the Bangor dam north, when said fishways shall have been rebuilt and put in usable condition.”

Under the provisions of this legislation it is the administrative responsibility of the Commissioner to determine what kind of patrol will comply with the terms of the statute.

JOHN S. S. FESSENDEN  
Deputy Attorney General

May 21, 1951

To Honorable Frederick G. Payne, Governor of Maine  
Re: Last sentence of Sec. 2 of Article IV, Part Third, Constitution

You have asked this office for an opinion as to the period of time contemplated by the words “within five days (Sundays excepted) after it shall have been presented to him.” (A bill, unless returned by the Governor, will be as if he had signed it.)

The key word which must be construed in ascertaining what constitutes the five-day period is “after”.

Section 16 of Article IV, Part Third, of the Constitution provides for the effective date of non-emergency legislation, the same being ninety days after the recess of the legislature passing it. Ever since this became a part of the Constitution of the State, it has been construed that in computing the ninety days, the day of adjournment has been excluded and the count starts on the day after adjournment.

By analogy, under Section 2 of the same Article of the Constitution, with respect to the returning of bills by the Governor to the legislature within 5 days after presentment to him, the count of the 5 days would start on the day following the date of presentment.

There are no Maine cases construing either one of these sections of the Constitution. However, the case of *Flint v. Sawyer*, 30 Maine, page 226, states the rule on page 229 as follows:

“When a statute requires an act to be performed in a certain time from the date of some transaction, the day of such date is excluded in the computation of time.”

In support of my opinion as to the rule to be followed in Maine, as cited above from the case of *Flint v. Sawyer*, there is the case of *Corwin v. Controller-General*, 6 S. C. 390, 395, construing Article III, Section 22 of the Constitution of that State, in which it is provided that a bill shall become a law if it is not returned by the Governor within 3 days after the same shall have been presented to him. The Court held that in counting the 3 days within which the bill is to be returned by the Governor, the day on which the bill was presented to him must be excluded. This is in line with the Maine rule.

The Maine Court has adhered to the same rule stated in *Flint v. Sawyer* in the case of *Page v. Weymouth*, 47 Maine 238 at page 244, and in *Inhabitants of Windsor v. Inhabitants of China*, 4 Maine 298, 304; and the same rule is cited and approved in *Moore v. Bond*, 18 Maine 142 at page 144.

JOHN S. S. FESSENDEN  
Deputy Attorney General

May 22, 1951

To Col. Francis J. McCabe, Chief, Maine State Police  
Re: Employees in Military or Naval Service

In your memorandum of May 18, 1951 you inquire as to the re-employment status of an employee of your department who, at the conclusion of a period of military service, voluntarily extends his period of active service. You refer specifically to the provisions of Section 23 of Chapter 59, R. S. 1955.

Section 23 of Chapter 59 was first enacted in 1939 and was amended in 1943. It was primarily for the purpose of preserving the re-employment rights of State employees entering the service of the United States during the period of World War II. You will notice that it preserves these rights for employees who enlist, enroll, are called or ordered or drafted into the military or naval service of the United States. For any employees falling within these conditions of entering into the military service, the rights are preserved if they do so in time of war, contemplated war, emergency, or limited emergency. In 1949 the section was amended by Chapter 91 of the Public Laws of 1949, making the section applicable to any such employee entering the service under the provisions of the Selective Service Act of 1948, “or while said act or any amendment thereto or extension thereof shall be in effect.”

This office understands that the President of the United States has declared an emergency under which condition Section 23, as it appears in the Revised Statutes, would be effective, and this, coupled with the amendatory legislation making the section applicable while the Selective Service Act of 1948 is in effect, activates Section 23 of Chapter 59 in protecting the re-employment rights of State employees. These rights are not protected solely in the case of those involuntarily serving in the Armed Forces. The rights of