

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

“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

those voluntarily serving are equally well protected. Since a person enlisting is protected, there would appear to be no reason why one re-enlisting should not be equally well protected.

JOHN S. S. FESSENDEN
Deputy Attorney General

May 22, 1951

To Jerome Burrows, Esquire, City Solicitor of Rockland

. . . On May 16th, at your suggestion, the City Clerk of Rockland called this office to inquire as to the propriety of committing an insane person to a State hospital on the authority of an osteopath.

Under date of October 7, 1942, the then Attorney General, Frank I. Cowan, in a similar case analyzed the then existing statutes with respect to the commitment of insane persons and came to the conclusion that they could not be committed on the authority of osteopathic physicians. Since the date of Mr. Cowan's opinion, Chapter 313 of the Public Laws of 1945 has been enacted, which chapter amends the laws applicable to osteopathic physicians. The amendment specifically refers to the "signing certificates for committing persons to state institutions" and with respect to the matters covered by the statute places osteopathic physicians upon the same basis as "physicians of other schools of medicine."

It is therefore our opinion that, although Section 114 of Chapter 23 of the Revised Statutes has not itself been amended, nevertheless under the provisions of Chapter 313 of the Public Laws of 1945 persons may be committed to an institution for the insane on the authority of osteopathic physicians.

In view of the provisions of Chapter 313 of the Public Laws of 1945, Mr. Cowan's opinion of October 7, 1942, is no longer an authoritative advisory opinion of this office. . .

JOHN S. S. FESSENDEN
Deputy Attorney General

May 22, 1951

To the Maine Real Estate Commission
Re: Irrevocable Consent

We have studied your memorandum of May 17, 1951, in which you ask what length of time an irrevocable consent filed by an out-of-state applicant remains in force.

In reply you are advised that an irrevocable consent, contemplated by the laws applicable to those engaged in the real estate business, would undoubtedly remain in force during the entire statutory period within which an action could be brought against the individual filing the same for any transaction arising out of his conduct of business in this State from and after the date that such consent was filed. Normally, this statutory period is six years from the time the transaction takes place.