

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

June 21, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Eligibility.

Inquiry has recently been made of this office as to the eligibility of a member of the Legislature for appointment as a member of the State Highway Commission when that person was a member of the Legislature which increased the salary of the Commissioners of the State Highway Department.

Article IV, Part Third, §10, of the Constitution is as follows:

“No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by election by the people.”

This constitutional provision was considered by the Court in answer to questions propounded by the House of Representatives, March 20, 1901, (95 Me. 564, 588) and the Court in its answer held that the Constitution (Art. IV, Part Third, §10) “prohibits the appointment of a senator or representative, during the term for which he shall have been elected, to any civil office of profit under this State, which shall have been created or the emoluments of which increased during such term. As to such office the appointment itself is prohibited, and the prohibition continues, not only while the member retains his seat in the legislature, but continues until the expiration of the term for which he was elected. He cannot, therefore, be appointed to such office during that term, even though he has resigned his seat in the legislature.”

The constitutional provision clearly indicates that no senator or representative is eligible for appointment to any office which has been created, or the salary of which has been increased during the term of his office.

The salary of each member of the State Highway Commission has been increased by the past Legislature in Chapter 330, Public Laws of 1951. It is my opinion, therefore, that a senator or representative of the 95th Legislature cannot be appointed a member of the State Highway Commission, and this disability continues during the entire term for which he was elected.

JAMES G. FROST

Assistant Attorney General

June 21, 1951

To H. H. Harris, Controller
Re: Mileage

In response to your memo of June 18, 1951, in which you inquire as to the effective date of Chapter 430, Public Laws of 1951, which chapter changes the rate of pay for use of private automobiles on official state business, and your further inquiry as to Fire Inspectors under Chapter 339, Public Laws of 1951, the following answers are submitted.

1. Chapter 340, Public Laws of 1951, which changes the rate of pay for use of private automobiles on official state business is an ordinary bill coming

within the constitutional provision which provides that such acts shall not take effect until ninety days after the recess of the legislature passing the act.

The 5000 miles referred to in these acts has reference to the first 5000 miles traveled in the fiscal year. If an employee has traveled 3000 miles under the present law by August 20, the effective date of Chapter 340, P. L. 1951, the remaining 2000 miles of the first 5000 miles to be traveled in this fiscal year shall be computed at the new rate provided for under Chapter 340.

2. Chapter 339, Public Laws of 1951, amends the prior mileage statute by providing that state fire inspectors be paid 7c for every mile traveled in the business of the state, thereby placing fire inspectors in the same category as inspectors of seed potatoes.

Chapter 340, Public Laws of 1951, is a statute primarily designed to change travel rate. One may be justified, therefore, in assuming that it was the intent of the legislature that fire inspectors shall be continued in this new category, along with seed potato inspectors.

As the effective date of both these acts falls upon the same day, August 20, fire inspectors do not fall within the 7c category on July 1, 1951, but within the 8c category, on August 20, 1951.

The answer, therefore, to your first question is, "No," and the answer to the second question is, "No."

JAMES G. FROST
Assistant Attorney General

June 22, 1951

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Salaries.

Your memo of June 19, 1951, relative to Chapter 408 of the Public Laws of 1951 has been received by this office.

As laid out, there is an overlapping in the salary scales from Trooper to Major. Without more, these overlapping scales would mean that in some instances a sergeant, lieutenant, etc., would draw less salary than a person in the preceding classification.

The last paragraph of the Act provides that "on appointment from one grade promotion to another, the member shall receive the salary in the new classification which is the next step above that which he received before he was promoted."

This last quoted paragraph will not do away with, or eliminate, the overlapping in the salary scales. Its purpose is to insure that upon being promoted to another classification the individual so promoted will not suffer a cut in salary, but will receive a raise to the next salary step above that which he received before he was promoted. To explain this paragraph further, assume a sergeant, under the new pay scale, is receiving \$78 per week. On being promoted to lieutenant his salary will be not \$72, base pay for a lieutenant, but \$81, or the next step above that which he received before he was promoted.

As to the effect of this Act on individuals who remain in the same classification, i. e., sergeant, lieutenant, etc., it is our opinion that the following illustra-