

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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 Troöper 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-

tion more truly portrays the intent of the Act:

Assume a man has been a sergeant for 3 years and his pay is now \$62 per week, or the third salary step in the range of \$60-\$61-\$62-\$63-\$64. On the effective date of the act his salary should be that granted in the third salary step of the new law, or \$69.

JAMES G. FROST

Assistant Attorney General

June 22, 1951

To Honorable Frederick G. Payne, Governor of Maine

Re: "Civil Office"

Article IV, Part Third, Section 10, Constitution of Maine:

"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."

There are numerous and varied definitions of the terms "office," "officer," "public office" as used in statutes and Constitutions. The above quoted provision of the Maine Constitution talks of "civil office". The term "civil office" is synonymous with "public office" 42 *Am. Jur.* 881.

The term "officer" is one inseparably connected with an office, so one who holds a public office is a public officer. A public officer is such an officer as is required by law to be elected or appointed, who has a designation or title given him by law, and who exercises functions concerning the public, assigned to him by law. The duties of such officer do not arise out of contract or depend for their duration or extent upon the terms of a contract. 42 *Am. Jur.* 880.

A public office is a privilege in the gift of the State. It must have some permanency and continuity and possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public.

"The powers conferred and the duties to be discharged must be defined, directly or impliedly, by the legislature or through legislative authority; and the duties must be performed independently and without control of a superior officer, other than the law, unless they are those of an inferior or subordinate officer, created or authorized by the legislature, and by it placed under the general control of a superior officer or body." 42 *Am. Jur.* 881.

The prohibition contained in Article IV, Part Third, Section 10 of the Constitution against a member of the Legislature, during the term for which he shall have been elected, accepting a civil office of profit, when that office shall have been created, or the emoluments of which increased during such term, applies only to those members of the Legislature accepting a "public office" as distinguished from accepting ordinary employment.

The distinction between the two, "public office" and "employment", is frequently difficult to trace, and recourse must be had to distinguishing criteria of public office, i.e. created by law, the duty involving a portion of the