

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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

sovereign power and in the performance of which the public is concerned, of a continuing nature, etc.

In particular instances where a member of the Legislature is being considered for a position the emoluments of which have been increased by the legislature of which he is a member, the problem should be submitted to this office for final determination.

JAMES G. FROST
Assistant Attorney General

June 26, 1951

To Mrs. Evelyn D. Marshall, Factory Inspector, Labor and Industry
Re: Authority under secs. 22 and 24, Ch. 25, R. S. 1944

In your memo of June 15, 1951, you request an opinion relative to the regulation of female employees working in ice cream stands similar to the stands known as "Dairy Queen", "Dairy Treat", etc.

The statute under consideration regulates the employment of females in various fields including manufacturing, mechanical or mercantile establishment, hotel, restaurant, etc.

It is our opinion that such businesses come under the heading of manufacturing establishment, and operators of such establishments are subject to the laws relative to manufacturing establishments.

You will note that under Chapter 184, Public Laws of 1951, effective August 20, under "Definition", the following definition is given:

"Retail manufacturer' shall mean any manufacturer of frozen dairy products who is not defined as a wholesale manufacturer."

JAMES G. FROST
Assistant Attorney General

June 26, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Liquor Research Commission; School Building Commission

Your memo of June 22d received and the following are answers with respect to your inquiries concerning the Liquor Research Commission and the commission created by the Maine School Building Authority.

Question 1. Mr. Obert, Chairman of the Liquor Research Commission created by Chapter 213, P&SL 1949, asks if that Commission is to continue functioning or has ceased to exist.

Answer. It is our opinion that the Commission created in 1949 continues until the effective date of the 1951 Act (Ch. 218, P&SL 1951), at which time a new Commission should have been appointed and qualified, to continue the work started by the 1949 Act, and to perform its other prescribed duties.

If the present Commission has funds available, it may continue its duties until August 20, but funds appropriated for the fiscal year 1951-1952 will, of course, be unavailable to the present Commission.