

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

sought our opinion as to whether it is legal to employ aliens as administrators or teachers in

- a) the public schools, or
- b) private academies which receive State aid.

Please be advised that it is our opinion that Section 5, Chapter 11, R. S. 1944, as amended, is not a bar to the hiring of aliens as superintendents and teachers in public schools or private academies.

JAMES G. FROST
Assistant Attorney General

September 10, 1951

To W. Earle Bradbury, Deputy Commissioner, Inland Fisheries and Game
Re: Expenditures for Publicity

In your memo of August 16, 1951, you quote paragraph 10, Section 63, and Section 110 of Chapter 33 of the Revised Statutes and ask whether a portion of these funds can legally be expended for promotion and publicity, sportsmen's shows, or educational purposes and such cost be reimbursed in whole or in part by those municipalities for which you have put on such publicity programs.

It is our opinion that there is nothing illegal in receiving reimbursement from those municipalities for which you have put on such shows. However, we do not feel that you should demand reimbursement from these towns or accept sums in excess of the actual cost.

JAMES G. FROST
Assistant Attorney General

September 10, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Vacancy in Office of Register of Probate

The attention of this office has been drawn to the death of Donat J. Levesque of Lewiston, Register of Androscoggin County Probate Court until the time of his death.

The vacancy created by the death of Mr. Levesque may be filled according to the following procedure:

1. Section 27, Chapter 140, Revised Statutes of 1944, provides that in case of the death of the register of a probate court the judge shall appoint a suitable person to act as register until another is qualified in his stead.
2. Article VI, Section 7, Constitution of Maine, provides that vacancies occurring in the office of Register of Probate by death, resignation, or otherwise, shall be filled by election. . . at the September election next after their occurrence; and in the meantime, the Governor, with the advice and consent of the Council, may fill such vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid.

Under these statutory and constitutional provisions, the vacancy created by the death of a Register of Probate may be temporarily filled by the appointment of a suitable person by the Judge of the Probate Court, such person serving until the individual appointed by the Governor and Council qualifies for the position (or until the elected official qualifies, which situation is not here present.)

JAMES G. FROST
Assistant Attorney General

September 14, 1951

To Marion E. Martin, Commissioner of Labor and Industry

Re: Vacation Pay

Your memo of September 11, 1951, in which you ask the question whether vacation pay comes within the phrase, "wages earned by him", contained in Section 38 of Chapter 25, R. S. 1944, has been received by this office.

Please be advised that it is our opinion that in the absence of a contract granting vacations with pay, such vacations are gratuities, not vested rights, and that vacations as such do not come within the meaning of wages earned.

We refer you to Mr. Fessenden's opinion of February 6, 1950, for further information on this point.

JAMES G. FROST
Assistant Attorney General

September 14, 1951

To Norman U. Greenlaw, Commissioner of Institutional Service

Re: Admissions under Chapter 374, Public Laws of 1951

With regard to Chapter 374, Public Laws of 1951, entitled, "An Act Relating to the Commitment to Mental Hospitals," we wish to inform you that a careful consideration of the provisions of that Act shows that there is grave question as to the constitutionality of Sections 104-107, inclusive.

Sections 104 through 107 were apparently intended to be emergency provisions. We, of course, are not declaring these sections unconstitutional, but we feel that the constitutional validity of these sections is open to serious question and therefore advise you that we have given to Drs. Pooler and Sleeper, respectively, our opinion that in the future they should refuse to accept patients whose admission is sought under the procedure set forth therein, until such time as a final determination of the constitutionality of these sections shall have been made by the Law Court.

We believe that those patients already in your custody through procedures followed under Sections 104 through 107 should be detained presently until a decision has been made as to their disposal. As to future admissions we advised Drs. Sleeper and Pooler that it is the opinion of this office that they should accept only those patients duly committed to their institutions by the proper Probate Court procedure under Sections 108 *et seq.*

ALEXANDER A. LaFLEUR
Attorney General