

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

November 9, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Age Limits with respect to Tenure of Office

You have inquired whether it is legal for the Governor of the State to appoint persons to public office who are over the age of seventy years.

It is not possible for this office to give you a categorical answer to the question, for the reason that we are aware of no provision of the statutes or the Constitution placing an arbitrary limit on the holding of public office.

We should point out, however, that the statutes provide for the compulsory retirement of judges of our Supreme and Superior Courts before they attain the age of seventy-one years if such judges are to qualify for the retirement compensation provided for retired judges.

Also we should point out that the provisions of the State Retirement System provide direct limitations for employment at seventy years of age, employment thereafter to be only upon the express authority of the Governor and Council extending the employment under certain circumstances.

Another provision of law limits membership on the Board of Trustees of the University of Maine to such an extent that when a member reaches the age of seventy years, his tenure of office is automatically vacated. While this provision was originally enacted in 1865, it is interesting to note that when the law with respect to trustees of the University was amended in 1951, the age limitation was retained, indicating a present legislative intent to conform to what appears to have been a policy, at least with respect to the University of Maine, since 1865.

There may be other statutes not coming to mind at the moment; but whether or not there be other statutes, it is believed that the foregoing is sufficient to point out what appears to be a distinct trend in legislative policy to refrain from retaining in the public service persons who have arrived at the age of seventy years.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 9, 1951

To William O. Bailey, Deputy Commissioner of Education
Re: Condemnation of Land for School Purposes

We are sorry that we have delayed so long in answering your oral request of recent date to help you relative to Frank M. Coffin's request with respect to appraising the damages when the city condemns land for school purposes.

Section 10 of Chapter 37, R. S., states that with respect to such a proceeding the damages shall be appraised as if provided for laying out town ways.

Referring to the sections of the statutes pertinent to town ways, we find that Sections 29 et seq. of Chapter 84 seem to provide quite adequately for such a procedure. Section 29 of that chapter states that written notice shall

be given when the city has such an intention, in answer to one of Mr. Coffin's question.

Relative to the appraisal of damages, we feel that he should use customary procedures relative to property to be condemned, and in the event that there are aggrieved parties, Section 33 of Chapter 84 affords relief.

JAMES G. FROST
Assistant Attorney General

November 20, 1951

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Featherfish and Spinning with Rod and Reel

This office has given consideration to your recent request for rulings concerning the so-called "featherfish" and "spinning with rod and reel".

On page 26, Section 44 of your Inland Fish and Game Laws, is found the legislature's ruling upon what may lawfully be used and what is restricted from use as concerns these two items. The statute provides that it is lawful to fish with the use of a single-baited hook and line, artificial flies, artificial minnows, artificial insects, spinhooks and spinners. By legal interpretation the word "artificial" is defined as being in opposition to the word "natural"; in one sense as being artful, subtle, crafty and ingenious. An exact imitation is not necessary to being an article within the meaning of the word "artificial". An imitation close enough to render an article suitable for use in like manner is sufficient. The statute does not define "fly" or "insect" or provide for definition by rule. While the definition on page 5 of your department's so-called "handbook" is proper, it is not exclusive, and an artificial fly or insect such as the sample supplied and called "flyrod size featherfish" is, in the opinion of this office, permissible under the statute for fly-fishing. We believe it is properly termed an artificial fly.

As to the spinning rod and reel, we believe that this instrument is lawful to be used if not left unattended. If left unattended it would be under the prohibition of a set line.

NEAL A. DONAHUE
Assistant Attorney General

November 20, 1951

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Court Cases before Judge Hugh Hastings

With your memorandum relative to the above subject you submitted a copy of a memorandum which you had received from the Governor, together with a copy of a letter which you wrote to the Governor dated October 3, 1951.

In your memorandum you ask for an opinion from this office relative to the law mentioned in the third paragraph of your letter to the Governor, which paragraph reads as follows: