

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

January 2, 1952

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Stonington Water Company

We have your memo of recent date in which you ask if the Stonington Water Company can be considered a department of the town and its employees therefore covered under a contract between the town and your Retirement System, or is a political subdivision and therefore its employees covered under a contract between the water company and the Retirement System.

Chapter 240 of the Private and Special Laws of 1907 is the Act incorporating the Stonington Water Company. By that Act four individuals, their associates, successors, and assigns were thereby made a corporation to supply water to the town of Stonington. The capital stock of the said company was set at \$50,000., said stock to be divided into shares of \$25. each.

At this point we can see that, without more, the Stonington Water Company would be a private corporation incorporated by a Special Act of the Legislature, and not a political subdivision of the State of Maine.

However, Chapter 271, P&SL 1909, amended Chapter 240, P&SL 1907, adding two new sections which authorize the Town of Stonington to raise money to purchase and own stock of the Stonington Water Company to an amount not exceeding \$10,000. at the market value of said stock at the time when said purchase may be made. Section 16 further provides that the municipal officers of Stonington shall appoint a person to vote the stock so purchased. Thus it is evident that, under our laws, the Town of Stonington owns not more than 1/5 of the stock of the Stonington Water Company. This statement is made with the thought that the price paid for stock purchased by the town is a reflection of the capital stock of the company as set at \$50,000.

It is therefore our opinion that your System may not negotiate with the Stonington Water Company as a political subdivision, and that if the employees of the Town of Stonington working with the water company desire coverage, it must be by reason of contract between your agency and the Town of Stonington.

JAMES G. FROST
Assistant Attorney General

January 3, 1952

To Paul A. MacDonald, Deputy Secretary of State
Re: Absent Voting for Members of the Armed Forces

We have your memo of December 5, 1951, relative to Chapter 92, P&SL 1944, An Act to Facilitate Voting by Members of the Armed Forces of the United States.

Section 11 of this Act provides:

"This act shall remain in force until 6 months after the state of war

ceases between the United States and every foreign government. It shall not be printed in the new revision of the statutes.”

You state that you need to know upon what date the state of war ceases between the United States and every foreign government, and, more particularly, that it is necessary for you to know whether Chapter 92 will be in effect on June 16, September 8 and November 4, the dates of the 1952 primary, state and presidential elections.

The cessation of hostilities does not necessarily end the war power or state of war. The state of war may be terminated by treaty, legislation, or presidential proclamation. Whatever the mode, its termination is a political act. It is our understanding that a state of war has ceased to exist with respect to Germany. However, there has been no ratification of a peace treaty with Japan, nor has there been a termination by legislation or presidential proclamation of the state of war with Japan.

We also have armies abroad exercising our war power and have made no peace terms with our Allies in that endeavor, not to mention our enemies.

In view of the fact that courts believe that a state of war is terminated only by a particular means and that with respect to Japan no such method has been invoked, and, further, because of the “police” activities in Korea, it is our opinion that a state of war exists and that, as a result, Chapter 92, P&SL 1944, is still in effect.

It seems very unlikely, moreover, that a political decision to the effect that a state of war between the United States and every foreign nation is at an end will come within the time necessary to end the privileges authorized under Chapter 92 before the end of the year 1952.

JAMES G. FROST
Assistant Attorney General

January 3, 1952

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

This memo is in response to yours of November 8, 1951, in which you make inquiry as to legal requirements regarding the leasing of a motor vehicle from one company to another and whether the Public Utility and registration plates and rights can be leased along with the vehicle from one company to another, etc.

The Maine Public Utilities Commission has never attempted to lay down any rules in respect to leased vehicles. It is generally recognized that an authorized carrier may, from time to time, augment his equipment by leasing additional equipment. The problem of knowing when the leased vehicle is used to augment the fleet of an authorized carrier and when it is used for the independent operation of the Lessor is a difficult one and is primarily a question of control.

It is also our understanding that, as a result of the vehicle check made at Kittery in mid-August, two cases are on their way to the Maine Law Court. One of these challenges the authority of the State of Maine to regulate an