

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

“Such employee shall be considered as on leave of absence without pay, and for the purpose of computing time in regard to pension rights and seniority, shall be considered during the period of his federal service as in the service of the governmental agency by which he was employed at the time of his entry into such federal service.”

These two statutes clearly deal with one and the same problem: section 23 of Chapter 59 has reference to employees having a permanent status and their rights, pensions, seniority, etc., when they enter military service; section 3 of Chapter 60 deals with the same problem and states that he (the employee) shall receive the benefits of section 23 of Chapter 59. If we read these statutes and apply the doctrine of *pari materia*, presuming that all statutes relating to the same subject matter were enacted in accord with the same general legislative policy and that together they constitute a harmonious or uniform system of law, it follows of necessity that the six-months limitation provided for in section 23 of Chapter 59 has a definite bearing on the action your System should take with respect to maintaining retirement credits for employees who enter the Armed Forces.

Section 23 of Chapter 59 provides that under certain conditions, employees who enter the Armed Forces are entitled to restoration to a particular position or one of like seniority upon discharge from the Armed Services. Section 3 of Chapter 60 puts a further limitation on such restoration, in that he may not, while in service, withdraw his contributions.

It would be a paradox to state that, while a person might be a member of the Retirement System, he would yet not be entitled to employment with the State. This would in effect be vitiating the first paragraph of section 3 of Chapter 60, which makes it mandatory that an employee be a member of the Retirement System.

JAMES G. FROST
Deputy Attorney General

March 2, 1953

To Morris P. Cates, Deputy Commissioner of Education
Re: Lincoln Academy

You state in a memo to us dated February 24, 1953, that a group of taxpayers in the town of Newcastle desire to appropriate at their next town meeting money to be given to Lincoln Academy to assist in its new school housing construction program. You note that Lincoln Academy has been serving secondary students of Newcastle for 152 years without a contract and you ask, “Is there any other section or sections of the Statutes (than section 90 of Chapter 80) which would make such desired appropriation legal?”

The powers of a town are contained generally in Chapter 80 of the Revised Statutes, and a town has no power except that which is expressly granted by statute or that which by necessity is implied in powers granted. Section 90 in effect provides that towns may raise the necessary money for the support of schools. This word “schools” has reference to public schools. There is further authority for the repairing and construction of buildings of academies, seminaries or institutes with which the town has a contract, as provided in section 96 of Chapter 37.

A town is prohibited from giving its money away. It cannot, therefore, appropriate money for a purpose which is not within the statute, for that would in effect be giving money away.

This office can find no section other than section 90 of Chapter 80 which would permit a town to appropriate money for school purposes and it would seem to be limited to public schools or schools with which the town has a contract.

JAMES G. FROST
Deputy Attorney General

March 10, 1953

Honorable Burton M. Cross, Governor of Maine
Re: Regulations Issued by Sea and Shore Fisheries

This office is in receipt of your request to "check the law as to the constitutionality of the regulations pertaining to Sea and Shore fisheries in certain areas of Washington County, as referred to in enclosed letters."

The letters attached to your memo have reference, we believe, to section 40 of Chapter 34 of the Revised Statutes, the pertinent portion reading as follows:

"The use of either otter or beam trawls within the territorial waters of Washington County is prohibited."

These letters further complain that such statute is unconstitutional, and although they have not cited that portion of the Constitution which they believe is violated by such statute, we believe they have reference to the Fourteenth Amendment to the Federal Constitution, which states that "No State (shall) deny to any person within its jurisdiction the equal protection of the laws."

It is our opinion that the legislature may enact such a law.

The guaranty of "equal protection of the laws" applies only to State action, and it does not require that State laws shall cover the entire field of proper legislation in a single enactment. It is aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It seeks an equality of treatment of all persons, even though all enjoy the protection of due process. It does *not* prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in privileges conferred and liabilities imposed. It is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not. *Cooley's Constitutional Limitations*, pp. 824, 825.

Briefly, then, there may be constitutional discrimination, if based upon a reasonable ground. It must be reasonable and based upon real differences in the situation, conditions, or tendencies of things. *State v. Leavitt*, 105 Me. 76, 84.