

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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.

With respect to the question at hand, the legislature of each State, representing the people (for whom the State holds the rights of common fishery in trust) has full power to regulate and control such fisheries by legislation designed to secure the benefits of this public right in property to all its inhabitants. And the equality clause of the Constitution is not necessarily infringed by special legislation, nor by a legislative classification of persons or things. *State v. Leavitt, supra*, p. 83. It is merely required that all persons subject to such legislation shall be treated alike under like circumstances and conditions.

Thus, the State of Maine can limit its fishing rights to residents of the State of Maine. *State v. Tower*, 84 Me. 444.

It can permit only residents of a particular town to remove clams from the beaches of the town for commercial purposes. *State v. Leavitt, supra*.

And it would similarly appear to be within the power and right of the Legislature to prohibit the use of a particular type of vessel in a particular territory. Such a law would apply equally to all persons using a particular kind of property in a certain location, and, *prima facie* at least, would not be a violation of the equality clause of the Constitution.

ALEXANDER A. LaFLEUR

Attorney General

March 12, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Appointment of the Chief Justice

This office has been asked for an opinion as to the method in which the Chief Justice of the Supreme Judicial Court is chosen.

The Supreme Judicial Court is composed, not of six Associates, one of whom shall be Chief, but rather of a Chief Justice and five Associates. This would indicate that the Chief Justice should be nominated by the Governor and appointed with the advice and consent of the Executive Council.

An examination of the records of the Secretary of State shows that this is in fact the method which has been used in the past. The late Harold H. Murchie had not completed his term of Associate Justice when the position of Chief Justice had to be filled because of the vacancy occasioned by the resignation of the late Chief Justice Sturgis. Mr. Murchie was then nominated Chief Justice and appointed as such with the advice and consent of the Council for a seven-year term.

We believe that this is the proper method in selecting a Chief Justice.

JAMES G. FROST

Deputy Attorney General

March 17, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Public Utilities Commissioner – Business Connections

This office has been asked to interpret that portion of Section 2 of Chapter