

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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

40 of the Revised Statutes which relates to a Commissioner of the Public Utilities Commission and the right to hold stock. That provision reads as follows:

“No member or employee of said commission shall have any official or professional connection or relation with or hold any stock or securities in any public utility . . . operating within this state. . .”

“Operating within this state” is the equivalent of “operating under the laws of this state” and, in legal intendment, to the phrase, “existing under the laws of this state”.

It would therefore be our opinion that a Commissioner should not hold stock in a public utility company doing business in this State or organized under and subject to the laws of this State.

ALEXANDER A. LaFLEUR

Attorney General

March 20, 1953

To Col. Francis J. McCabe, Chief, Maine State Police

Re: Out-of-State Residents Arrested for Speeding

We have your memo of March 17, 1953, in which you relate the following facts and ask whether or not an arrest for a misdemeanor can legally be made after a lapse of time such as occurred in this instance:—

“One of the officers in this troop stopped a resident of Canada for speeding. His intent was to obtain an immediate trial for this out-of-state resident. He asked the operator to drive a matter of a few miles to the nearest municipal court. Upon arriving in the city he found that both the Judge and the Recorder were out of town. The officer then informed the driver involved that he would have to place him under arrest and have him obtain bail, which was done

“The question has now come up as to whether or not the arrest was legal, since the officer did not inform the person involved until about 20 minutes after the offense occurred even though he was constantly within the officer’s sight while driving to the court room.”

There is no doubt that legally and morally an arresting officer is bound to act promptly at the time of the offense and would not be justified in permitting any time to intervene between the time of the offense and the time of the arrest which might not be interpreted to be a continued attempt on the part of the officer to make the arrest.

Under the factual situation outlined above, it is our opinion that the arrest could be legally made.

JAMES G. FROST

Deputy Attorney General

March 20, 1953

To Morris P. Cates, Deputy Commissioner, Education Department

Re: Leavitt Institute

We have your memo asking the following question: