

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

March 23, 1953

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Park Employees — Participating Local Districts

We have your memo stating that a committee elected by the Town of Pittsfield annually receive under the provisions of a will certain moneys to be expended in the care of a public park, in that town, and that the question is raised as to whether or not the employee or employees involved should be considered as town employees for purposes of Social Security coverage.

Section 3 of Chapter 84, R. S., provides that a town may accept such a gift, and the purpose fulfilled by town employees in taking care of the property is a valid municipal purpose.

It is therefore our opinion that the employees would be employees of the town for the purpose of Social Security coverage.

JAMES G. FROST
Deputy Attorney General

March 27, 1953

To Honorable Emery S. Dickey, House of Representatives
Re: Validation Act in Jackson

This decision is based upon the following facts and it should be understood that any material deviation therefrom may change this opinion.

Facts: A certain gentleman was challenged as to his ability to read our Constitution or to write his name, during their last town meeting, all in accordance with Article XXIX of the Constitution of Maine. Failing to comply with the request of the moderator to prove his ability in this respect, he was refused the right to vote at said town meeting and withdrew. There is now some feeling that because this gentleman cast votes in all town proceedings since 1946, all actions taken at those meetings and more especially at the referendum on the school district, are invalid, because an illegal vote was accepted. I am assuming that all decisions registered were by more than a bare majority of one vote. I have attempted to ascertain the vote on the school district from the Secretary of State, but he has no record of the result, which the town clerk should have forwarded to him some time ago; so once again I will assume that it was accepted by more than a majority of one vote.

On the foregoing facts, it is my opinion that no validation act is necessary. It is generally held that the reception of illegal votes at an election does not affect the validity unless it is shown that their reception affected the result. 18 Am. Jur. 351 §260, Reception of Illegal Votes. The decisions of our courts are in accord with this rule. *Prince v. Skillin*, 73 Me. 361, and I quote therefrom:

“The mere circumstance that improper votes were received, will not vitiate an election.”

One can readily see that if the rule were otherwise, there would be no certainty to any election, to any office, to any tax levy. If my assumptions are not correct, then the true facts should be brought forward so that we can evaluate the situation in its true perspective.

ROGER A. PUTNAM
Assistant Attorney General

April 3, 1953

To W. H. Deering, Treasurer, Augusta State Hospital
Re: Patients' Funds

We have your letter posing the following questions:

1. "Can the hospital retain funds that were in the possession of a mental patient at the time of his commitment, or accumulated by him during the period of his commitment, these funds being in the custody of the hospital, for the payment of reasonable expenses of his support furnished by the Augusta State Hospital?"

2. "Is it necessary for the hospital to have the consent and approval of the patient to withhold any part of his funds for the State at the time of his discharge?"

Your first question is answered in the negative, if you mean the retention of funds without the approval of the patient.

The answer to Question 2 is "yes."

We feel that in no instance should you make an agreement with a minor who is being discharged from the hospital, but that such agreement should be made with the guardian of the minor. We do feel that in each case where a patient is being discharged from the hospital, having funds of any substantial amount on deposit, an attempt should be made to reach an agreement that a portion of those funds can be retained by the hospital and credited for the payment of bills for his board and care or support.

We think, further, that each case should be considered on its own merits and that no attempt should be made to retain funds when such retention would create a real hardship on the person being released.

JAMES G. FROST
Deputy Attorney General

April 15, 1953

To Paul A. MacDonald, Deputy Secretary of State
Re: Legal Loads of Trucks

We have your memo requesting answers to questions concerning the interpretation of section 100 of Chapter 19 of the Revised Statutes, as amended, which statute deals with the load in pounds that may be carried by a group of axles on commercial vehicles.

The pertinent portions of the statute which are to be considered read as follows: