

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

Mr. James Briggs, and an intra-departmental memo from Henry S. Carson, Biologist.

It would appear that Sportsmen Incorporated has purchased a portion of land in the Stockholm Game Preserve in Aroostook County. Mr. Briggs, on behalf of Sportsmen Incorporated, has requested the Commissioner of Inland Fisheries and Game to change the boundaries of the Preserve so as to exclude that land purchased by the club.

We wish to advise that the Stockholm Game Preserve is a statutory Preserve, created by the legislature, by Chapter 76 of the Public Laws of 1949. Having so established this game preserve by statute, the legislature alone can amend or repeal the provisions of the act. It cannot delegate to any other party its power to do so.

Section 129 of Chapter 33 grants to the Commissioner power to create temporary game preserves in limited areas and from time to time to release all or any part of such lands whenever he deems it expedient. Thus the provisions of Section 129, while not permitting the Commissioner to amend or repeal the preserves created by the legislature, would permit him to release parts of a temporary preserve established by the Commissioner.

JAMES G. FROST
Deputy Attorney General

September 15, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Screen at Embden

We have your memo of August 27, 1953, in which you inquire as to the responsibility for the repair of the fish screen at Embden Pond. The sum of \$1000 was provided by Chapter 216 of the Resolves of 1927 for the screening of the pond.

It is the opinion of this office that under our present statutes and the provisions of this Resolve, your department is not authorized to repair the screen at Embden Pond. The purposes for which departmental moneys can be spent are particularly limited by statute and such statute should be construed with reasonable strictness.

JAMES G. FROST
Deputy Attorney General

September 18, 1953

To Willard R. Harris, Acting Director of Personnel
Re: Federal Employees in the Department of the Adjutant General

We have your memo of September 8th and attached correspondence relating to the employment of Mrs. Josephine L. Smith by the Federal Government at the Adjutant General's Department. It appears that the position which Mrs. Smith holds will no longer be required as of October 2, 1953, and she has requested the Personnel Board to schedule a hearing at which her case would be considered.

You state that the employees on the Federal payroll at the Adjutant General's office, of whom Mrs. Smith is one, are not considered by the Personnel Department to come within the meaning of classified employees as established by the provisions of Chapter 59, Section 6, Revised Statutes of Maine, for the following reasons:

- 1) They are not employed from eligible lists prepared upon the basis of examinations;
- 2) The titles of the positions are those of the Federal Government rather than those of the State classified service;
- 3) The salaries are those established by the Federal Civil Service and they are paid by Federal checks.

You ask for a ruling from this office as to whether or not Mrs. Smith comes within the provisions of the Personnel Law relative to classified employees.

A reading of the correspondence attached to your memo will show that it has been the understanding of the Maine State Retirement System and of the employees involved that they are State employees to the extent that they can participate in the Retirement System. It is also indicated that he believes they are employees for the purposes of retirement.

It is the present opinion of this office that Mrs. Smith and those persons similarly situated are employees of the State to the extent that they may participate in the Retirement System and not otherwise.

With respect to No. 1) above cited, Section 8 of Chapter 59 requires that personnel in the classified service be selected from eligible registers prepared by the Director of Personnel and that placement be by competitive tests. As stated above, Mrs. Smith has not been employed subject to the provisions of Section 8. Appointments to positions and promotions in the classified service shall be made according to merit and fitness from eligible lists prepared upon the basis of examinations and, so far as practicable, shall be competitive. Section 6 of Chapter 59 of the Revised Statutes.

For the above reasons it is our opinion that such employees on the Federal payroll of the Adjutant General's Department do not come within the meaning of classified employees, as established by the provisions of Chapter 59, Section 6, of the Revised Statutes, as amended.

JAMES G. FROST
Deputy Attorney General

September 23, 1953

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Vera A. Gordon

You ask whether the Maine State Retirement System, in computing the additional retirement benefits, under the provisions of Chapter 60, R. S. 1944, granted to Vera A. Gordon under Chapter 171 of the Resolves of 1953, should consider in effect that Miss Gordon has made the contributions for the required period of 35 years, although in fact her basis of actual service approximated six months less than 35 years (exclusive of the additional period