

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

application of the increase authorized by Chapter 400 to teachers who have retired or who will retire under subsections IX, X and XI without having chosen an option under Section 7 of Chapter 60 of the Revised Statutes or is the increase authorized by Chapter 400 available to teachers who, while complying with the requirements of such subsections, have nevertheless chosen an option under Section 7?

It is the opinion of this office that the increase of pension provided for by Chapter 400 is available to any teacher who has heretofore retired or shall hereafter retire and who has retired either under the provisions of subsections IX, X and XI without having chosen the option or who, being otherwise eligible under subsections IX, X and XI to retire, has chosen an option under Section 7.

JAMES G. FROST
Deputy Attorney General

November 25, 1953

To Spaulding Bisbee, Director, Civil Defense and Public Safety
Re: Workmen's Compensation relative to Age

Replying to yours of November 17th, requesting an opinion on the Workmen's Compensation Act, relative to age:—

In Chapter 267, Laws of 1953, an Act relating to Civil Defense, the statement is made that this law was enacted "so all citizens will participate."

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State of their residence. Citizenship is membership in a political society and imposes a duty of allegiance on the part of a member and a duty of protection on the part of the society. Age is not involved in citizenship.

Of course, enlistment in the Civil Defense Auxiliaries must be confined to those who can understand and subscribe to the oath in Section 14 of Chapter 298 of the Laws of 1949.

This office is of the opinion that there is no prohibition against having such members under the age of eighteen years, if otherwise eligible.

NEAL A. DONAHUE
Assistant Attorney General

November 30, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Sheepscot Lake Water Level

This office has given consideration to your memorandum of November 5th on the above captioned subject, which has to do with a claim presented by a Mr. Bushey relative to flowage damage claimed to his land on Sheepscot Lake.

It appears that your Palermo dam, situated a short distance from this lake, controls its water level and that Mr. Bushey's land is across the lake from the outlet where the dam is situated. Your department bought two parcels

of land which together included a mill privilege which had formerly been used in that neighborhood, and a new dam was constructed somewhat nearer the lake than the former one had been. As to whether this new dam held the water to a higher level than was formerly the case there appears to be some disagreement; but it is said that all parties in interest were once in agreement that the level as now arranged for the dam was proper.

Mr. Bushey has submitted a claim and requested the legislature for permission to press such claim against the State for his claimed damages. The legislature, giving some consideration to that claim, disallowed it and refused him permission to sue the State.

The water of a great pond, being more than ten acres in extent, is public property, owned and controlled by the State for the benefit of the public. The Colonial Ordinance of 1641-7, reserving to the government full ownership and sovereignty over great ponds, was extended to the territory of Maine with the same force as in Massachusetts. (102 Me. 155.) Under the Colonial Ordinance, except as to grants made prior to the Ordinance, the State has full propriety in and sovereignty over the waters of great ponds. (118 Me. 155.)

Any change from the natural level of the water in a great pond must be with legislative authority. (118 Me. 506.)

As great ponds and lakes are public property, the State may undoubtedly control and regulate their use as it thinks proper. (82 Me. 56.) Land bordering on a great pond extends to the low water mark. The owner is entitled to the full enjoyment of his property in its natural state, that is, to the natural low-water mark. He cannot be deprived of that full enjoyment, except it be taken from him for public uses under the exercise of the right of eminent domain, with the accompanying payment of just compensation. (118 Me. 506.)

If, however, the State itself causes the water of a great pond to be held back and an owner of shorage on the lake claims damage for flowage, he must first obtain consent of the Legislature before maintaining any action for such claimed damage. The Legislature in the State of Maine has like authority as the General Court of Massachusetts. In that sense the legislature is the highest Court in the State. Our courts have only such authority as is granted to them by the Legislature. Our highest Court, the Law Court, is purely a creation of the Legislature. The Legislature made it and could unmake it. In former times many of the matters now handled by the courts, such as divorces, adoptions, etc., were handled by the Legislature and may be so handled today.

The State, being sovereign, can only be sued or made a defendant with its own consent. The Legislature considers in each case whether the State should consent to such suit. After hearing such matter as is presented to it, usually before the Judiciary Committee in Maine, this committee, composed largely of lawyers, recommends to the whole body of the Legislature that the State should or should not submit to such suit. When such right is denied, it may well be presumed that the case presented did not convince the Legislature that justice required that such an action be brought.

When the Legislature has withheld its sanction for bringing such action, it is a rejection of the claim, and such claim cannot be considered any longer as an obligation of the State. Another Legislature may, upon such facts as are presented to it, if it sees fit, entertain such claim and give consent to the State's being made defendant. Unless and until it does so, such a claim should not be entertained as a valid obligation of the State.

In this case the Legislature has rejected the claim and refused the requested permission to bring suit. . Thus, the claim should not be further entertained. To recognize this claim further, by lowering the dam to appease the claimant, would seem to be in disregard of our highest tribunal, the Legislature, which has heard the claim and denied it.

NEAL A. DONAHUE
Assistant Attorney General

December 2, 1953

To Hon. Burton M. Cross, Governor of Maine
Re: Chairmanship, State Highway Commission

This office has been asked for an opinion relative to the phrase, "vacancy . . . in the office of chairman," as seen in Section 2 of Chapter 398 of the Public Laws of 1953. The fact situation which gives rise to the question is as follows:

On July 2, 1952, Mr. Lloyd B. Morton, a member of the State Highway Commission, was elected chairman of that Commission for the ensuing year. Mr. Morton's term of office as a member of the State Highway Commission expired on December 7, 1952, and he was re-appointed for a three-year term ending December 7, 1955. On December 3, 1952, the Highway Commission confirmed its action taken on July 2, 1952, to continue Mr. Morton as chairman of the State Highway Commission until the first meeting of the State Highway Commission to be held in July, 1953, "or until his successor as chairman shall be duly elected."

From the above outline it can be seen that Mr. Morton was elected by the Commission to be chairman on July 2, 1952, until the Commission's first meeting in July of 1953. Subsequent to July, 1953, to the present date no action has been taken by the Commission to elect a new chairman, nor in fact has any action been taken by the Commission with respect to the chairmanship of the Commission since July of 1953.

Chapter 398 of the Public Laws of 1953 revises Section 3 of Chapter 20 of the Revised Statutes and substantially changes the duties of the chairman of the Highway Commission, providing also that such chairman shall be appointed by the Governor.

Section 2 of Chapter 398 reads as follows:

"Effective date. This act shall become effective either at the expiration of the term of office of whomever may be chairman of the highway commission on the date of approval of this act or upon a vacancy occurring by resignation or otherwise in the office of chairman of the highway commission, whichever is sooner."