

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

might be the case if only Section 39 of Chapter 37 were involved: “. . . every person between the ages of 5 and 21 shall have the right to attend the public schools *in the town* in which his parent or guardian has a legal residence.”

However, as you can see from the above consideration of the situation, many more problems enter the picture when a child attends school in a town other than the town in which he has a legal residence.

In view of the over-all situation, Masardis' denial of responsibility, and the other factors present, we feel that the matter is one which should be settled between the town, the academy, and the parents, and we therefore refrain from giving any opinion on the precise question asked.

JAMES GLYNN FROST
Deputy Attorney General

March 2, 1954

To Joseph A. P. Flynn, Secretary, Electricians' Examining Board
Re: Licensing of Electricians under R. S., Chapter 73-B

This office has been requested to consider Chapter 73-B, R. S. 1944, enacted by Chapter 307, Section 1, P. L. 1953, requiring that electricians be licensed, as it applies to oil-burner installation and servicemen.

The precise question may be phrased: May a competent oil-burner serviceman be licensed as an electrician under the “grandfather clause”, where his entire electrical experience has been restricted to work on such burners?

The answer, in our opinion, is: Under the “grandfather clause”, the Board may grant a license to any person who presents satisfactory evidence that he has engaged in the business of making electrical installations in any or all of the following fields, namely: heating, lighting, and power within the State of Maine for at least 2 years prior to June 30, 1953. As used here, “installations” include installation, repairs, alterations and maintenance, or any of them.

Section 6 of the statute provides that a license may be given without examination “to any applicant therefor who shall present satisfactory evidence that he has the qualifications of such electrician and has engaged in the business or occupation, as the case may be, of making electrical installations within the State for at least 2 years prior to June 30, 1953.”

Section 2 of the statute defines an electrician as “any person, firm or corporation that, as a business, hires or employs a person or persons to make electrical installations, or without hiring any person does such work as a principal business or as auxiliary to a principal business for his or its own account. . .”

It would thus appear that any person who has been installing oil burners is acting as electrician “as auxiliary to a principal business,” etc. It would seem to follow that if he has been in such business for at least 2 years prior to June 30, he should be given a license without examination.

The subject is annotated in 4 A.L.R. 2d, 667. It is the editorial conclusion that grandfather clauses, generally speaking, are intended to protect those conscientious persons who are earning a living in a certain vocation even though they might not be able to pass the examination. One cannot generalize

so broadly. There is no reason, of course, for admitting everyone who asks admittance. The Board should at all times be satisfied that the person is not pretending to have some skill which in fact he lacks.

We are conscious of altering only one word of the statute and for that there is statutory authority. Subsection I of Section 2 states that "electrical installations" relates to devices "for heating, lighting *and* power purposes". The underlined "and" we have considered to be equivalent to "or". Chapter 9, Section 21, provides:

"The words 'and' and 'or' are convertible as the sense of a statute may require."

We believe that the two are convertible in this instance for the reason that an electrician is defined as a person who, as a business, makes electrical installations, or makes them "as auxiliary to a principal business". But their business relates to heating and not to lighting and power. Hence it would seem to follow that the "and" should be understood to mean "or".

BOYD L. BAILEY
Assistant Attorney General

March 8, 1954

To Honorable Burton Cross, Governor of Maine

Re: Probation Officer — Incompatibility with Post Office Service

This office has been asked if the position of probation officer is incompatible with employment in the Post Office Department of the Federal Government.

Our Maine Court has said that two officers are incompatible when the holder cannot in every instance discharge the duties of each.

Section 137.24, paragraph (i) of Title 39, Code of Federal Regulations, deals with postal service and outside employment of employees, and reads in part as follows:

"Postmasters and employees in post offices shall not engage in any business or vocation that will interfere with their official duties. . ."

Section 29 of Chapter 136 of the Revised Statutes of 1944 specifically places upon probation officers the duty of attending the Superior Court during the times when persons convicted of crime are sentenced, of giving advice upon request to the courts, and of attending the sessions of other courts within their respective counties having criminal jurisdiction as often and as continuously as the performance of their duties shall permit.

It would appear to this office that these positions are incompatible and that the probation officer would be unable to perform adequately his services for the State if he were employed in the postal service.

It should be noted also that the tenure of office of a probation officer, under the provisions of Section 28 of Chapter 136, is during the pleasure of the Governor and Council. Under such a statute the Governor and Council may terminate the services of an appointee when evidence would show that such appointee cannot properly perform his statutory duties.

JAMES GLYNN FROST
Deputy Attorney General