

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

We express no opinion as to the advisability or practicability of making such charge, as we believe this is an administrative function.

JAMES GLYNN FROST  
Deputy Attorney General

December 21, 1954

To Kenneth B. Burns, Business Manager, Institutional Service  
Re: Bath Military and Naval Children's Home

Your memorandum relating to the advisability of striking out the word "gratuitously", as found in Section 174 of Chapter 23, R. S. 1944, received.

The Military and Naval Children's Home, Bath, was declared to be a State institution by the provisions of Section 1 of Chapter 254 of the Public Laws of 1929, at which time the word "gratuitously" appeared in the Public Laws for the first time. It has been in our statutes ever since.

Section 3 of this Act further ordered the trustees to turn the trust fund over to the State Treasurer. I will refer to this fund later.

Section 4 of the Act repealed all inconsistent Acts relating to the school, but is not material here.

It is the opinion of this writer that the legislature has the right to strike out the word "gratuitously" and thus make relatives legally liable to pay, subject to assessments of costs within reasonable limits, for the board, care and education of the inmates of the institution. The legislature has always reserved the right to amend the charters of corporations since 1831. This is, however, not a corporation change in the charter, but more or less a change in what has now become a State institution.

The only problem in striking out the word "gratuitously" arises from the possibility that somebody may have conveyed a gift to this school on the condition that it should always be maintained for the purpose of rearing and educating children gratuitously. Along this line we have attempted to check, first the trust fund involved and second the real estate involved.

In 1931, Frank I. Cowan, Esquire, later Attorney General of the State of Maine, did an exhaustive investigation into the history, background and handling of trust funds held by the State of Maine for its various institutions. This Report is in printed form and I refer to page 18 thereof, section XIII, entitled, "State Military and Naval Children's Home". Mr. Cowan found out funds which cannot now be traced, having a book value of \$16,000. The funds which came to the State under the provisions of Chapter 254, Public Laws of 1929, had a value at that time (1931) of \$12,261.62. Mr. Cowan states and I quote, "This fund has no known conditions attached, save that it is for the benefit of the Military and Naval Children's Home. It is fully segregated." In view of Mr. Cowan's exhaustive study I do not feel that it is necessary to retread that ground. We will assume, therefore, that this fund is without condition. There any change in the statute would have little, if any, effect.

The question arose in mind whether or not the property where the Bath Military and Naval Children's Home now is situated might have been conveyed

to the trustees or to the State upon a condition which might be important in view of the fact that there is a desire on the part of your department to change the mode of operation.

I took the liberty of checking at the Registry of Deeds, therefore, and I am attaching the abstracts that I made there. I find no conditions attached to the conveyance to the State of Maine, so that the removal of the word "gratuitously", appearing in the statute, will have no adverse effect upon the right of the State to continue to hold this title to the land and buildings in Bath. . .

I am returning herewith the history of the Home which you lent me.

ROGER A. PUTNAM  
Assistant Attorney General

December 23, 1954

To H. H. Harris, Controller

Re: Constitutional Law Officers, Age Limit

We have your memo in which you ask the following question:

"Is it legal and permissible for the State Controller to allow salary payments to Constitutional Law Officers, elected by the Legislature, who have passed their seventieth birthday without an extension authorized by Governor and Council action?"

Your question arises as a result of the enactment by the Legislature of the following law: (Sec. 6-A of Chapter 60, R. S. 1944, I-B.)

"Any member in service who attains age 70 shall be retired forthwith on a service retirement allowance or on the first day of the next calendar month; except that any member who is an elected official of the state or an official appointed for a term of years may remain in service until the end of the term of his office for which he was elected or appointed. Notwithstanding the foregoing, on the request of the governor with the approval of the council, the board of trustees may permit the continuation for periods of 1 year, as the result of each such request, of the service of any employee who has attained the age of 70 and who desires to remain in service."

Subsequent to the enactment of this statute, the Legislature, in joint convention, elected an officer who had attained age 70 to serve for a period of two years in a constitutional office. Such action was, of course, inconsistent with the wording of the law above quoted, and the question propounded raises the legal effect of such election by the Legislature.

In effect, it is asked if the Legislature, after enacting a law, can subsequently take action which is contrary to that law. In other words, can the Legislature amend its laws?

In answering this question we have considered that action taken by the Legislature in accordance with and under the authority contained in the Constitution of Maine, has the same effect as an "Act", so-called, of the Legislature, that is, it has the effect of law, and we are of the opinion that the Legislature, either expressly or by implication, can amend its laws.