

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

domicile is always dependent upon the fact situation involved and must, as seen in Section 68, subsection V, show the man's clear intention that he make the State of Maine his home. It would not be a proper function of this office to substitute its judgment or discretion for that of the town clerk. It is within the jurisdiction of the town clerk to determine whether or not a man is eligible to purchase a Maine resident license. If the person applying for such license is aggrieved at the decision of the town clerk, he has a proper legal remedy.

FRANK F. HARDING
Attorney General

August 15, 1955

To Honorable Edmund S. Muskie, Governor of Maine

Re: University of Maine—Organized Labor

At your request I have reviewed my memorandum of February 2, 1954, respecting the rights of organized labor at the University of Maine, in view of a memorandum of Henry T. Wilson, Legal Assistant, representing American Federation of State, County, and Municipal Employees.

My opinion was given at the request of the President of the University, not addressed to any specific issue but describing to President Hauck what in general were the rights and duties of an administrative officer of the State of Maine dealing with representatives of organized labor.

As I would summarize my own presentation, public employees may meet, talk, petition, and appoint representatives, but no labor agreement can have any teeth in it. By "teeth" I mean remedies in a court of law or equity.

Concretely, let us suppose that President Hauck signed a labor agreement on behalf of the State of Maine, recognizing the A. F. of L. as bargaining agent, fixing conditions of employment, holidays, promotion, demotion, etc. Suppose that the agreement is violated by the State of Maine. It is my opinion that President Hauck has no authority to make such agreement. The agreement being a nullity, no suit or action could be brought to enforce it. The legislature could at any time pass legislation changing the terms of the agreement.

"Public employers cannot abdicate or bargain away their continuing legislative discretion and are therefore not authorized to enter in collective bargaining agreements with public employee labor unions."

(Editorial Summary, 31 A.L.R. 2d 1170)

President Hauck knows that he may talk to any one, including professional union organizers, about anything. However, he has been advised that the ultimate and continuing authority respecting conditions of employment must reside in the administrative heads of the University and that he cannot bind the State of Maine by what is commonly understood to be a labor agreement. By labor agreement I intend something that is legally effective. . .

BOYD L. BAILEY