

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

September 26, 1955

To Samuel H. Slosberg, Director of Legislative Research

Re: Payment of Compensation to Members of the Committee Added by Chapter 381 of the Public Laws of 1955

We have your memorandum posing the following question:

"The Legislative Research Committee requests an opinion of the Office of the Attorney General as to whether there is any constitutional or statutory prohibition relative to the payment of expenses and per diem compensation to those members of the 97th Legislature who have become members of the Legislative Research Committee under the provisions of Chapter 381 of the Public Laws of 1955."

A check of the statutes and constitutional provisions regarding your question discloses only one apparent conflict which requires discussion. Article IV, Part Third, Section 10, of the Constitution provides as follows:

"No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people."

We have checked the adjudicated cases on this point and find that similar questions have been raised regarding legislative committees which would be comparable to our Legislative Research Committee. The leading case on this point is *State v. Yelle*, 29 Wash. 2d 68; 185 P. 2d 729, where the court was concerned with a State Legislative Council which, for all intents and purposes, is the equal of our Legislative Research Committee. The major point raised in this case was Article II, Section 13 of the Washington Constitution, which provides as follows:

"No member of the legislature during the term for which he is elected shall be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected."

The case in general holds that the position on the committee is not a civil office within the meaning of the term as it is used in the Constitution. This is particularly true, they say, because the committee members do not exercise one of the elements of sovereignty. They find that the Legislative Council's power is limited to collecting information, reporting as to the facts they find to the next legislature, and making their reports public. They find that the committee was not engaged in making laws, executing them, or administering them, and that therefore no member of the Council could be deemed the holder of a civil office.

Similar committees have been under attack in other States for the same reason and it is worth while to note that there are cases holding that these committee members do not hold public office. The following cases hold to that effect.

Parker v. Riley, 18 Cal. 2d 83; 113 P. 2d 873; 134 ALR 1405
(State Committee on Interstate Cooperation)

Terrell v. King, 118 Tex. 237; 14 S.W. 2d, 786, and *People v. Termaine*, 252 N.Y. 27; 168 N.E. 817.

The gist of these decisions can be summarized by the statement taken from *Parker v. Riley* as follows:

“Where a statute merely makes available new machinery and new methods by which particular legislators may keep themselves informed upon specific problems, it cannot be said to have imposed upon them any new office or trust.”

It would only be fair to note that there is a case holding that a committeeman on the Montana Legislative Council holds a civil office. This is *State v. Holmes* (Mont.) 274 P. 2d 611. The Court gave no reason for its conclusion, and it is our conclusion that the majority of cases hold such a position not to be a civil office and that this is by far the better view. Consequently it is our opinion that we do not perceive any constitutional or statutory prohibition regarding the payment of expenses and per diem to the members of the 97th Legislature who became members of the Legislative Research Committee by virtue of the provisions of Chapter 381 of the Public Laws of 1955.

ROGER A. PUTNAM
Assistant Attorney General

September 27, 1955

To Marion Martin, Commissioner of Labor and Industry

Re: Women Workers in Woods Operations

You ask: 1) Whether, under the provisions of Section 30 of Chapter 30, R. S. 1954, the number of working hours of a woman cook with a river drive is regulated.

The answer is, No. We are not of the opinion that any of the activities defined in Section 30 include a river drive.

2) “In view of this question and the fact that our inspectors will be visiting lumber camps, in accordance with your interpretation of the Department’s responsibilities under Sections 2 and 4 of Chapter 30 (your memorandum of June 10, 1955), we would appreciate your opinion as to whether woods operations—river drives or permanent or temporary lumber camps—would come under the definition of ‘workshop’ or ‘mechanical establishment’ as the terms are used in Section 30 et seq. See Section 7 for the definition of ‘workshop.’”

In our opinion, woods operations, river drives, or temporary or permanent lumber camps, do not come within the definition of “workshop” or “mechanical establishment,” as the terms are used in Section 30 of Chapter 30.

The premises, room or place in which a workshop is established (Section 7 of Chapter 30) would, in our opinion, require that the labor performed be performed in such premises, room or place, or an area immediately adjacent to such property, and we further feel that the words require a building of some sort in which the work is done.

JAMES GLYNN FROST
Deputy Attorney General