MAINE STATE LEGISLATURE

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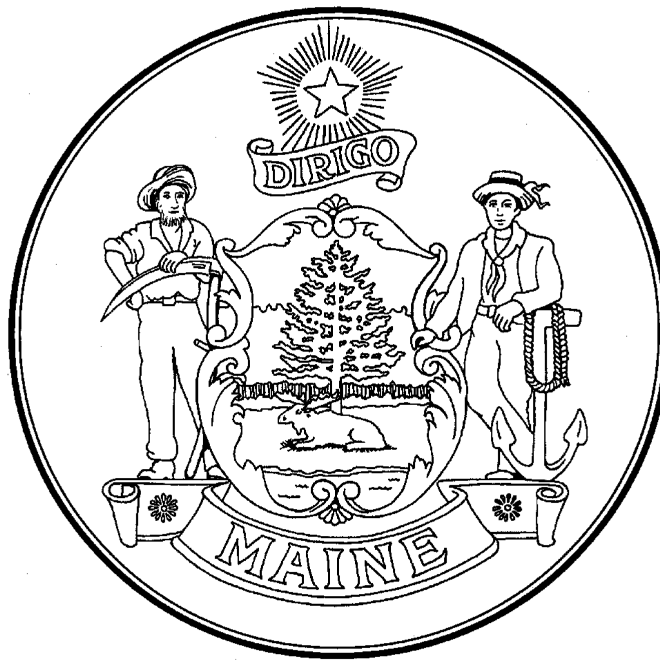

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

I. Competitive,
II. Noncompetitive,
III. Labor,

in accordance with rules and regulations prescribed by the board."

Examining the statutes further, we find that classified employees are employed as the result of standing on an eligible register, achieved usually by competitive examination given by the Personnel Board (Section 12). Their duties and responsibilities are ascertained by the Director of Personnel (Section 13); compensation is paid according to a compensation plan adopted by the Personnel Board; original appointment, promotion, transfer, reinstatement or demotion is accomplished in pursuance of rules and regulations established by the Board (Section 15); the dismissal and disciplinary action taken in relation to classified employees are also subject to statutory control.

In comparing the State classified employees to "civilian employees," we find that the Adjutants General of the several States, Territories, Puerto Rico, and the District of Columbia have the authority to employ, fix rates of pay, establish duties and work hours, supervise, and discharge "civilian employees," all within the purview of National Guard Regulations. See National Guard Regulations No. 75-16, Department of the Army, Washington 25, D. C., 7 January 1953.

These "civilian employees" are on the Federal payroll and are paid completely from Federal funds.

The above examination of our statutes compels us to the opinion that such "civilian employees" are not eligible to participate in the Maine State Retirement System. The statutes regarding State employees are in no manner complied with in the employment, the continuing employment, the dismissal or other control of these "civilian employees."

In answer to your further question as to whether the "civilian employees," or any of them, were eligible to participate in the Maine State Retirement System as of September 1, 1954, we are of the opinion that they were not so eligible. The laws with respect to participation in the Maine State Retirement System were, in so far as this group is concerned, the same in 1954 as they are today, with complete control of the employees vested in the Adjutant General.

Having determined that "civilian employees" are not eligible to participate in the Maine State Retirement System, we would advise, in terminating the association of such employees with the Retirement System, that each such "civilian employee" who has made contributions to the Retirement System should be refunded the entire amount of such contributions, plus such interest thereon, not less than 3% accumulated interest, as the Board of Trustees shall allow, in conformity with Section 12, Chapter 63-A, R. S. 1954, as amended.

FRANK F. HARDING
Attorney General

April 30, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Controlled Access Roads

You have requested my opinion as to the meaning of Section 11 of Chapter 23 of the Revised Statutes.

Sections 6 to 12 were enacted in 1949 so that the State would have the authority to build non-access ways when the need and the money available coincided. The language was taken from the statute of another State, and its interpretation was not discussed.

Our Courts have consistently said in their opinions that the statutes relating to the Highway Commission should be liberally construed to achieve the purpose of the creation of a good highway sytem and that the broad discretionary powers of the Commission were fundamental. Therefore, any limitation on such powers should be subject to careful interpretation and should not be extended beyond its obvious intent.

Section 11 limited the controlled access to state highways and further limited this controlled access to ways "in the compact or built-up areas of any city or town as defined in section 113 of chapter 22," when approved by the municipal officers of the town or city where the road was located. This definition reads: territory contiguous to (which means *touching*) a way with structures less than one hundred and fifty feet apart for a distance of at least a quarter of a mile. Municipal officers may designate such compact areas by appropriate signs.

This definition obviously contemplates an existing way with structures built on the abutting land. An overpass that goes over a way but does not change its status is not within the intent of Section 11. That section is intended to prevent the denial of *existing* access to a certain type of way, by changing its status without the town's permission. It cannot apply to a new layout that does not coincide with an existing way. It means that the Commission could not rebuild the way through the business section of a town and deny access to the way without the consent of the town.

In the case of an overpass, the abutters on the old road still have their access to the old road.

The condemnation of the property of an abutter on the old road to provide for necessary abutments would not come within the intent of Section 11.

Section 11 was not intended to prevent the crossing of a way by an overhead structure. Its intent was to limit the power to deprive access to an existing way in a built-up section. Its intent was to limit the danger of wiping out the commercial center of a town. The incidental loss of one or two properties (which loss must be compensated for) in the process of crossing a way is no different in kind than a taking of property in non-built-sections.

It would not be consistent with the established legislative theory of grants of administrative discretion to the Commission, as buttressed by the decisions of the Courts, to so broadly interpret this statute as to require the town's consent to build an overpass.

Since this statute has been in effect several bills have been presented to the Legislature that would have required the assent of towns to certain phases of highway construction. All of these have been rejected.

This statute can only be interpreted to apply to the redesignation of existing ways in built-up sections, and it is very questionable whether it was intended to apply to all of these.

L. SMITH DUNNACK
Assistant Attorney General