STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

The State accepted the Smith-Hughes Act as seen in Section 196 of Chapter 41 of the Revised Statutes of 1954. Drawing your attention to Section 197 of Chapter 41 we note that in addition to designating the Treasurer of State as custodian for moneys received under the provisions of the Smith-Hughes Act, there is also authority for the Treasurer to accept and expend upon the order of the State Board of Education "All moneys received by the State from the federal government for vocational training . . ."

It is our opinion that the above-quoted section of law is adequate authority for the State Board of Education to accept and expend federal funds for vocational education.

It is our understanding that there is no distinction between the meanings of the terms vocational training and vocational education—such terms being used synonymously in the field of education nationwide.

JAMES G. FROST
Deputy Attorney General

June 26, 1957

To Frank A. Farrington, Chairman, Industrial Accident Commission

Re: Logging

Concerning the effect of Chapter 343 of the Public Laws of 1957, which becomes effective August 28th and eliminates the operations of cutting, hauling, rafting or driving logs from an exclusion in Workmen's Compensation Act after that date, it is my opinion that an assent filed prior to August 28, 1957, excluding operations of cutting, hauling, rafting or driving logs from same will have no effect whatsoever, and a new assent should be filed by the employer, and the employer and the insurance carrier should be notified to file.

The view has been taken that the Workmen's Compensation Act does not in any way impair the obligation of contracts, within the meaning of the provision of the Federal Constitution, which inhibits the States from exacting laws that may have this effect. 58 Am. Jur. 586, Sec. 16. In the case of *White v. Insurance Co.*, 120 Me. 69, the court laid down the rule in regard to the construction of the Compensation Act. The court said:

> "We do not lose sight of the well settled rule that the Compensation Act should receive a liberal construction, so that its beneficent purpose may be reasonably accomplished. Its provisions, however, cannot be justly or legally extended to the degree of making the employer an insurer of his workmen against all misfortunes, however received, while they happen to be upon his premises. Such was not the intent of the statute.
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> "The employer has rights as well as the employed. Their rights stand upon an equality in the eye of the law. Perversion of the law, either to benefit the employee or to protect the employer, has a tendency only to bring the law into contempt. This Compensation Act, therefore, should be administered with great care and caution, judicial discretion and impartial progress, striving only to discover the spirit in the letter of the law, and to apply that without fear or favor."

In harmony with established principles of legislative enactments, in the absence of a clearly expressed intent to the contrary, it would be deemed to be prospective and not retrospective.

> "Workmen's Compensation Acts have been held not to apply to injuries which occurred before the law went into effect and on the same principle an amendment of the statute in respect to the matter of substantial right, does not apply to existing injuries or to claims arising by reason of the prior death of an injured employee."
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> 58 Am. Jur. 599, Sec. 33.

> "It is ordinarily provided that employers who refuse to accept provisions of the Compensation Act may not interpose a common law defense of assumption of risk, contributory negligence, or the negligence of a fellow servant, in actions by employees for the recovery of damages for personal injuries sustained while engaged in employments included within the provisions of the Act."
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> 58 Am. Jur. 607, Sec. 46

> "With respect to time, the right to compensation for an injury, under the Workmen's Compensation Act is governed, in the absence of any provision to the contrary by the law in force at the time of the occurrence of such injury,"
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> *Flickenger v. Industrial Commission,* 181 Cal. 425.

As respects insurance, the form, contents, execution and issuance of contracts and policies are frequently regulated by express provisions of the statute. It is sometimes provided that such policy should contain the usual and customary provisions found in such policies. It is competent for employers holding an employer's liability policy issued by a casualty company to agree, when they elect to come under the Workmen's Compensation Law, that the riders affixed to the policy, which except insurer from claims of compensation under that law, shall be attached by the company, to modify the policy by an agreement that the unearned premium shall stand as insurance for compensation for injuries for the remainder of the insurance year.

In regard to what law governs, that has been determined in *Gauthier's Case,* 120 Me. 76. Rights of claimant are determined by the law that was in force at the time of the accident. In Fournier's case, 120 Me. 91, it was said that the employer may exclude logging operations, as the law so provides. Now that the law has been amended by striking out the operation of cutting, rafting or driving logs, that case no longer applies.

Construction of assent and policy of indemnity is a question of law. *Hutchinson's case,* 126 Me. 104. Unless there is assent, the Commission has no jurisdiction. *Daley v. Furnishing Co.,* 134 Me. 107.

After August 28, 1957, therefore, the assent in policy will not be in proper form. It seems to me that the Commission should require new assents to be filed and should issue the required certificate upon the new assents to cover cutting, rafting and driving logs.

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