

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

company and has nothing to do with the business transacted on the premises.

It is my opinion that the sign requires a license.

L. SMITH DUNNACK  
Assistant Attorney General

September 3, 1957

To Honorable James C. Totman

Re: Change of Residence of Member of the Legislature

. . . You inquire as to your eligibility to serve as State Representative in view of your change of residence.

Your question would seem to be answered by Article IV, Part First, Section 4, of the Maine Constitution, which reads as follows:

“Qualifications of members.—No person shall be a member of the house of representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty-one years, have been a resident in this state one year; and for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents.”

I understand that it is necessary for you actually to change your residence and that it is not reasonably possible to raise the question of your intention to be a resident of Bangor or a resident of another State.

I believe that under your circumstances, as I understand them to be, this Constitutional provision would preclude you from acting as a Representative from Bangor during any special session of the Legislature. Personally, I very much regret that this is so, but the Constitution seems to be very plain in regard to this.

FRANK F. HARDING  
Attorney General

October 10, 1957

To Honorable Edmund S. Muskie, Governor of Maine

Re: Appointment of Members of the Board of Examiners of Podiatrists

Reference is made to your inquiry with regard to Section 9 of Chapter 111 of the Public Laws of 1957, amending Chapter 74 of the Revised Statutes of 1954, and providing for a new Board of Examiners of Podiatrists.

The Board consists of four members: Two members of the Board of Registration of Medicine, i. e., the Chairman and the Secretary-Treasurer of said Board, and two podiatrists to be appointed by the Governor with the advice and consent of the Council. The law specifically states that the term of podiatrists shall be four years. The next sentence provides that appointments shall be so spaced that the term of one of the podiatry members of the Board shall expire every two years. It is obvious that, in order to carry out the intention of the

Legislature, where the appointment of two podiatrists must be made at the same time, the term of one of them must be for two years and the other may be for four years.

This is a situation where the intent of the Legislature must govern over the express words of the statute.

ROGER A. PUTNAM  
Assistant Attorney General

October 29, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Construction Area Permits

You have requested my opinion as to the powers of the Commission to grant the request of Cianchette Bros. to operate overloaded trucks on certain ways in Bangor.

Section 98 of Chapter 22 was amended in 1953 by Chapter 231, which authorizes the State Highway Commission to establish "construction areas." Although this grant of authority was not made in the clearest of language, the intent of the proponents of the original bill is known. They had two objectives:

1. to permit the use of the unusually heavy modern road building machinery on the job, and

2. to provide for the use of Euclids and heavily loaded trucks in hauling materials to the job.

The statute uses the words "within construction areas established by the Commission." No attempt having been made to define "construction area" in the law, it must be construed to mean such areas as are deemed advisable by the Commission.

The paragraph providing for procuring permits from towns and cities indicates that the legislature contemplated that the areas could extend beyond the focus of the construction work for the purpose of hauling materials to the work.

The paragraph that permits the state engineer-in-charge to grant construction permits indicates that one of the major intents of the act was to provide for speedy action. Of course, no engineer-in-charge would issue such a permit without acting under some directive.

The amendment in question provides for a bond, etc., so that the Commission can be assured of the rebuilding of the road, if necessary.

In construing statutes relating to the powers of the Highway Commission we must consider that the primary duty of the State Highway Commission is to provide for and protect the highways.

Although it seems that the legislature presumed that these permits would be freely issued, there are no mandatory words. The statute says "*may* be issued," and the Commission has the power to establish the areas. In fact, there is no set-up for applications for the establishment of these areas.

It is my opinion that the Commission should be assured that the highway can be and will be restored to its previous condition and that the traffic hazards will not be dangerous. It must be noted that the inclusion of federal projects in these areas indicates that the act was intended to aid the contractors, but it