

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

“The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council.”

Tenure of offices “not otherwise provided for” includes those contained in Chapter 11, Section 5, R. S. 1954:

“All civil officers, appointed by the governor and council, whose tenure of office is not fixed by law or limited by the constitution, otherwise than during the pleasure of the governor and council, except ministers of the gospel appointed to solemnize marriages and persons appointed to qualify civil officers, shall hold their respective offices for 4 years and no longer, unless reappointed, and shall be subject to removal at any time within said term by the governor and council.

“All such officers so appointed and all state employees shall be citizens of the United States of America.”

State humane agents, their tenure not being provided for in the appointing act, are embraced by Section 5 of Chapter 11 (State officers appointed by the Governor and Council) and hold office for 4 years, and shall be subject to removal at any time within said term by the Governor and Council.

Removal of such officer must be by the Governor with the advice and consent of the Council (Opinion of the Justices, 72 Me. 542).

We are therefore of the opinion that if the Governor and Council feel that the situation justifies such action, then by their concurrent action the Governor and Council may remove a State humane agent from office.

Notice of the action taken by the Governor and Council should be sent to the State humane agent and recorded in the office of the Secretary of State.

JAMES GLYNN FROST
Deputy Attorney General

August 1, 1958

To Wolcott H. Fraser, Deputy Secretary of State

Re: Voting Status of National Guardsman Receiving Pauper Supplies.

We have your memo of July 21, 1958, which reads as follows:

“Section 2 of Chapter 3 of the Revised Statutes prohibits a pauper from qualifying as a voter.

“Section 10 of Chapter 94 of the Revised Statutes excepts certain soldiers, sailors and marines from being classed as paupers.”

“Does a member of the National Guard become a pauper upon receipt of pauper supplies and thus become ineligible to vote?”

Answer. It is our opinion that a member of the National Guard who does not comply with the provisions of Section 10, of Chapter 94, in not having served in the Army, Navy or Marine Corps in the War of 1861, the War with Spain, World Wars I and II, or the Korean campaign and who has not received an honorable discharge from said service, would become a pauper upon receipt of pauper supplies and thus become ineligible to vote.

We would also point out that in addition to Section 2 of Chapter 3 of the Revised Statutes, Article II, Section 1 of the Maine Constitution also excepts paupers from the voting privilege.

JAMES GLYNN FROST
Deputy Attorney General

August 1, 1958

To Madge Ames, Director, Child Labor Division, Labor & Industry

Re: Catering Business

We have your memo, stating that an accident to a 14-year-old boy has brought to your attention the doubtful classification of a catering business under the provisions of the child labor laws. The catering business with which you are concerned is a business establishment where the cooking and baking are done, such products as baked beans, brown bread, pies, etc., being available for retail sale.

When the business caters to banquets and parties, food which has been cooked at the business establishment is transported by trucks to the place where the banquet or party is being held. Minors are not employed otherwise than for the parties and banquet, and then mostly for loading and unloading trucks.

Question: You ask our opinion as to whether such a business comes under the provisions of Section 23 of Chapter 30 of the Revised Statutes of 1954, as amended (bakery), or Section 25 (eating place or mercantile establishment), or whether it is not covered at all by any provisions of the child labor laws.

Answer. It is the opinion of this office that the catering business, as outlined above, comes within the definition of mercantile establishment, as contained in Section 25 of Chapter 30, and that the employment of a 14-year-old boy in the capacity above described would be in violation of said section. Said section reads:

“No child under 15 years of age shall be employed, permitted or suffered to work in, about or in connection with any eating place, sporting or overnight camp or mercantile establishment. . . The provisions of this section shall not apply to any such child who is employed directly by, with or under the supervision of either or both of its parents.”

The word “mercantile” means having to do with, or engaged in trade, the buying or selling of commodities. The word “establishment” means an institution, place, building or location. The expression “mercantile establishment” means an institution or place of mercantile business, where the buying or selling of merchandise is conducted or engaged in.

A business concerned with the cooking and baking at its location or place of business and the sale of such products comes within the term, “mercantile establishment”.

We are therefore of the opinion that the catering business in question is a mercantile establishment.

JAMES GLYNN FROST
Deputy Attorney General