

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

MAINE STATE
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provisions of section 127 et seq. of Chapter 43, is because such companies must observe rules in the conduct of their business with the public laid down by some state department or agency other than the Secretary of State. In the case of a common carrier, such carrier would be regulated by the Public Utilities Commission. Trailways of New England, Inc. is registered by our Maine Public Utilities Commission as a common carrier of passengers for hire by motor bus.

A common carrier of passengers for hire by motor bus duly certified by the Maine Public Utilities Commission is a public service company and is exempt from filing under the provisions of sections 127-135 of Chapter 53.

When such a company erroneously complies with the said sections and likewise erroneously pays a fee, such fee can be refunded only by legislative act. We cannot find any statutory authority permitting the Secretary of State to make such refund and, absent such statutory authority, the Secretary of State is powerless to make such refund.

We would suggest that you accept the affidavit supplied by the company, place it on file so as to record the action that has taken place, and to charge no fee for same.

JAMES GLYNN FROST
Deputy Attorney General

June 9, 1959

To: Francis H. Sleeper, M. D.
Superintendent
Augusta State Hospital
Augusta, Maine

Dear Dr. Sleeper:

This is in response to your request to this office to examine two forms of "Permission for Operation", one entitled A — the other B.

Form A is presently in use in your hospital and form B is suggested by certain of the doctors who believe that expressed authorization of the administration of anesthetics is necessary in order to prevent suits for malpractice.

The general rule seems to have become well established that before a physician or surgeon may perform an operation upon a patient he must obtain the consent either of the patient, if competent to give it, or of someone legally authorized to give it for him, unless immediate operation is necessary to save the patient's life or health, although under exceptional circumstances consent may be regarded as having been impliedly given. 76 A L R 562.

We would point out also, that the general rule for the action for operating without consent seems usually to be regarded as one for assault or trespass rather than for negligence.

We think a consent should be in broad general terms permitting the surgeon to do what he deems, in his judgment, best for the patient.

Form B, excluding the clause relating to anesthetics, would seem to be a sufficiently broad consent along the lines of form 10; 1523, found in Am. Jur. Legal Forms Annotated.

It would seem that the administration of anesthesia and other necessary ministrations incident to an operation would be consented to in a broad general consent. Including specifically the additional consent to application of anesthesia might cause a court to construe the consent as being limited to the things mentioned in the consent. If it is insisted that the anesthesia clause be included, we would recommend also including the following paragraph:

“Realizing that an operation by modern methods requires the cooperation of numerous technicians, assistants, nurses, and other personnel, I give my further consent to ministrations on the said _____ by all such qualified medical personnel working under the supervision of Dr. _____ before, during, and after the operation to be performed.”

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

June 11, 1959

To: The Honorable Joseph T. Edgar
Speaker of the House
House of Representatives
State House
Augusta, Maine

Dear Mr. Edgar:

With reference to your oral request for an interpretation of the term “two-thirds of the members elected to each House” as that is used in Article IV, Part Third, Section 16 of the Constitution, as being the vote required to pass emergency legislation, your question arises as a result of vacancies in the House caused by death — these seats remaining unfilled.

We are of the opinion that the term “members elected” means the total members originally elected to the Ninety-Ninth Legislature. The phrase requires all members elected to be taken into account whether present or not. (*Pollasky v. Schmid*, 128 Mich. 699; *Clark v. North Bay Village* (Florida), 54 So. 2d 240; Cooley’s Constitutional Limitations at Page 291; Law and Practice of Legislative Assemblies — Cushing, Section 261, Page 100; and Mason’s Manual of Legislative Procedure, Section 512 at Page 352.)

Very truly yours,

FRANK E. HANCOCK
Attorney General