

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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August 14, 1959

To: Paul A. MacDonald
Deputy Secretary of State
State House
Augusta, Maine

Dear Mr. MacDonald

This is in reply to your request for an opinion dated July 28, 1959, relative to Chapter 144 of Public Laws of 1959.

The Act amends Section 150 of Chapter 22 of the Revised Statutes principally by adding the following words:

“only those prior convictions had within the 10 years immediately preceding a conviction shall be considered.”

Question #1. Is this Act retroactive?”

Bowman v. Geyer, 127 Me. 351 at 354, sets forth the principles of construction of statutes.

“. . . There is no general principal better established than that no statute ought to have a retrospective operation. In the absence of any contrary provisions all laws are to commence *in futuro* and act prospectively, and the presumption is that all laws are prospective and not retrospective. (Citation omitted.) It is a rule of statutory construction that all statutes are to be construed as having only a prospective construction. . . unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used . . .

“But the presumption against the retrospective operation of statutes is only a rule of construction, and if the legislative intent to give a statute a retrospective operation is plain, such intention must be given effect, unless to do so will violate some constitutional provision . . .”

In our opinion there is no clear expressed declaration contained in the Act in question to give it a retrospective effect nor are there any convincing implications in the language used to make the act anything but prospective in its meaning.

“Barren of such express commands or convincing implications, the limitation can not be deemed to have been intended to be retrospective. It must be construed by the fundamental rule of statutory construction strictly followed by this Court that all statutes will be considered to have prospective operation only, unless the legislative intent to the contrary is clearly expressed or necessarily implied from the language used . . .” *Miller v. Falon*, 134 Me. 145 at 148.

The answer to your first question is “No”.

Because of the foregoing, it is not necessary to answer Question #2.

Question #3. “If this Act applies only to drunken driving convictions occurring after the effective date of the Act (September 12, 1959) insofar as the determination of second offenses are

concerned, is it correct to consider as second offenders only those persons who received a conviction subsequent to September 12th and have a similar previous conviction within 10 years?"

Since in our opinion the law will act prospectively only, it should apply only to those persons convicted after the effective date of the act, and having a similar previous conviction within 10 years.

Very truly yours,

FRANK E. HANCOCK
Attorney General

August 17, 1959

To: Honorable Harvey R. Pease
Clerk of the House
House of Representatives
State House
Augusta, Maine

Dear Harvey:

We have your letter of June 13, 1959, in which you ask for an opinion as to your duties under the provisions of Chapter 10, Section 7, Revised Statutes of 1954, as amended.

As amended by Chapter 252, Public Laws of 1959, Chapter 10, Section 7, Revised Statutes of 1954, reads as follows:

"He shall when the Legislature is not in session be the executive officer of the Legislature, and unless the Legislature otherwise order, have custody of all legislative property and material, arrange for necessary supplies, and equipment *through the State Bureau of Purchases, arrange for necessary service*, make all arrangements for incoming sessions of the Legislature, have general oversight of chambers and rooms occupied by the Legislature, permit state departments to use legislative property, dispose of surplus or obsolete material *through the continuing property record section of the Bureau of Public Improvements* with the approval of the Speaker of the House and President of the Senate and approve accounts for payment. *The clerk shall maintain a perpetual inventory of all legislative property and make an accounting to the Legislature upon request.*"

You specifically ask (1) for a ruling as to how far you are directed to go in controlling chambers and rooms occupied by the Legislature and (2) must the Clerk of the House approve all accounts, bills, etc., payable from the legislative appropriation when the Legislature is not in session.

Answer to Question No. 1 —

The statute clearly states that the Clerk of the House shall be the executive officer of the Legislature when the Legislature is not in session and, unless the Legislature otherwise order, have general oversight over chambers and rooms occupied by the Legislature.