

# 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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lations as he finds necessary or appropriate to efficient administration of a program of vocational rehabilitation, shall enter into agreements with local state and federal agencies providing services relating to vocational rehabilitation, . . .”

The executive officer of the board refers to the Commissioner of Education, Section 5, Chapter 41, Revised Statutes of 1954.

Section 195-E sets out the powers and duties of the Vocational Rehabilitation Division with the proviso that such powers and duties are subject to the approval of the state board. Subsection I, Section 195-E, states that the director may prescribe regulations (1) governing the protection of records and confidential information; (2) the manner of filing applications; (3) eligibility and other working or administrative procedures.

It appears from reading the two sections that there is no conflict in the laws but a division of the authority to make rules and regulations. It seems that the language in Section 195-A contains a broad grant of rule making power to the Commissioner subject to the approval of the board and many of the steps he is authorized to take in this field are necessarily antecedent to any valid rule or regulation being promulgated by the director. The director's rule making power is limited to those areas specifically set out in Section 195-E and subject to the approval of the state board. It is my opinion that if the Commissioner promulgated a rule or regulation covering any area that the director has authority to regulate, the general regulation by the Commissioner would preempt the director from promulgating a regulation in this area.

However, based on the departmental organization, it would be presumed that most of the rules and regulations would be a cooperative venture with complete agreement between the commissioner and the director. In any event, the Board of Education must approve all rules and regulations before they become valid.

GEORGE A. WATHEN  
Assistant Attorney General

January 5, 1960

To: Frederick N. Allen, Chairman of Public Utilities Commission

Re: Casco Bay Lines

I have your memorandum of December 22, 1959, in which you request an opinion relating to the Commission's jurisdiction over Casco Bay Lines.

Section 10, Chapter 495, of the Private & Special Laws of 1885 (Incorporation of People's Ferry Company) was amended by Chapter 116 of Private & Special Laws of 1953, part of which reads as follows:

“Sec. 10. . . The People's Ferry and Casco Bay Lines shall maintain safe daily service to the islands of Casco Bay under regulations promulgated by the public utilities commission as to rates, schedules and safety.”

Obviously the legislature intended that jurisdiction over this utility be placed in the Public Utilities Commission. It is my understanding that the Commission has acted in the field of rates and schedules although

to this point has never promulgated rules as to safety. In my opinion the broad term "safety" would apply to all places of the ferry's operations; ferries, landings and all facilities connected with the service.

You have received complaints of unsafe conditions by petitions of citizens of the islands. In my opinion you should proceed to hold hearings and investigate as provided by Section 55 of Chapter 44, Revised Statutes of 1954.

Should additional funds be necessary to conduct a proper investigation of the safety conditions of the operations of Casco Bay Lines then you would have authority to request them from the proper source.

The answer, therefore, to both your questions is "yes".

FRANK E. HANCOCK  
Attorney General

January 8, 1960

To: The Honorable E. J. Briggs  
20 Pioneer Avenue  
Caribou, Maine

Dear Senator Briggs:

You inquire if, in the event the opportunity should be presented, you would be eligible to be appointed as commissioner of Inland Fisheries and Game.

It is my opinion that you would not be eligible to accept appointment to that position.

Article IV, Part Third, Section 10, Constitution of Maine reads as follows:

"No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people."

The prohibition above expressed has, by our court, been interpreted to remain during the entire two-year period for which a senator or representative is elected. This means that one could not even resign from the legislature and accept such appointment. With respect to the instant office, we note that the commissioner's salary was increased from \$9,000 to \$10,000 by the 99th Legislature, and that increase was received as of September 12, 1959, retroactive to the week ending August 22, 1959. We would note, too, that that office has all the indicia of being an office of profit.

For the above reasons it is my opinion that you would be ineligible to be appointed to that office.

Sincerely yours,

JAMES GLYNN FROST  
Deputy Attorney General