

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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tive sanction. L. D. 1433, if interpreted as limiting the Town of Franklin to accept the moneys and not authorize the construction of said water system, would be an authorization to receive money for a purpose for which they have no authority to expend the funds.

It would appear in reading the document that the town is authorized to accept the legacy and to construct and maintain said system. Therefore, I believe the document does contain authority to construct a water system for the Town of Franklin. It does not authorize the establishment of a water district, nor does it authorize them to acquire land by condemnation.

GEORGE A. WATHEN
Assistant Attorney General

January 25, 1960

Memo to: Judiciary Committee at request of Representative Knight

Re: Extent of Coverage under the Act Relating to the Licensing and Safety Operation of Boats

Chapter 36-A as enacted by Chapter 349, Public Laws of 1959, provides for the licensing and operation of boats. Section 2, Chapter 36-A provides in the definition of a motorboat an exclusion for "a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto."

Section 3, Chapter 36-A prohibits the operation of unnumbered motorboats on the waters of this state propelled by machinery of more than 10 horsepower, the exception of those numbered under applicable federal law, or in accordance with the numbering system of another state. "Waters of this state" as used in this section are defined in Section 2 of the act to mean "any inland body of water, wholly or partly within the territorial limits of this State, and all rivers and streams above tidewater."

Section 6, Chapter 36-A is the exemption section which sets forth seven exemptions which are clear in their import. It appears that boats operated on coastal waters are not included in this act.

GEORGE A. WATHEN
Assistant Attorney General

February 2, 1960

To: Colonel Robert Marx, Chief of State Police

Re: Application of pension laws to the Chief and Deputy Chief

We have your memo of December 4, 1959, in which you ask for our opinion concerning the effect of Chapter 15, section 22, Revised Statutes of 1954, on the Chief and Deputy Chief of the Maine State Police.

Chapter 15, section 22, R. S. 1954, deals generally with retirement of State police officers, and provides that upon being placed upon the pension

roll an officer shall "receive thereafter $\frac{1}{2}$ of the pay per year that is paid to a member of his grade at the time of his retirement." (This section applies only to persons who were members of the State police on July 9, 1943.)

This same section relates to the retirement of the Chief of the State police.

"The provisions of this section shall apply to a member who may become chief of the state police. Such chief shall be credited with the number of years which he served as a member to be added to the number of years served as chief. Upon his request for retirement, made in writing to the governor and council, he shall receive thereafter $\frac{1}{2}$ of the pay per year that is paid to him as chief at the time of his retirement, provided he has served at least 4 years as chief; otherwise he shall receive thereafter $\frac{1}{2}$ of the pay per year that was paid to him as a member at the time he was appointed chief."

With an exception not here pertinent, the law with respect to retirement of members other than the chief was substantially the same in 1944. Chapter 13, section 21, R. S. 1944.

The law relating to the chief was first enacted by Chapter 255, section 2, P. L. 1945, and is identical to the law today.

By private and special act (Chapter 214, P. & S. 1951) it was provided that —

"Pensions continued. The retired members of the state police shall receive, in addition to their present retirement pay, such additional amounts as will equal $\frac{1}{2}$ of the pay per year that is now paid to a member of their respective grades at the time of retirement.

"Such moneys shall be appropriated from funds of the state police.

"The provisions of this act shall become effective July 1, 1951, and continue in effect until June 30, 1953."

This act, at the time of its enactment, could have resulted, and as we recall, did result, in increases to members in retirement, because the effect of the act was to give to a retired member not $\frac{1}{2}$ the pay he received at the time of retirement, but $\frac{1}{2}$ the pay that would be paid to a member of the same grade if he were to retire during the period which Chapter 214 would be in effect.

Chapter 214 amended by implication the provisions of Chapter 15, section 22, R. S. 1954.

In 1953, by P. & S. 166, the effectiveness of Chapter 214, P. L. 1951, was prolonged by the following amendment to said Chapter 214, amending the last paragraph of Chapter 214:

"The provision of this act shall become effective July 1, 1953."

You ask the following questions with respect to the above statutes:

What is the effect of Chapter 214, P. & S. 1951, and Chapter 166 P. & S. 1953, upon

1. A member of the Department who retires as Deputy Chief
2. A member of the Department who retires as Chief

1. Chapter 214, P. & S. 1951, as amended by Chapter 166, P. & S. 1953, applies as to a Deputy Chief in the same manner as it applies to members otherwise eligible to participate in the benefits of the statute.

2. The said chapter also applies to Chiefs who have been selected from the membership of the Maine State Police. In the case of both the chief and a member, these particular sections apply only when such chief or member were members on July 9, 1943.

You also ask: "In the event that you are of the opinion that these laws are applicable to the retirement pay of either or both members above, it is requested that you advise me if you believe that approval of the Governor and Council of such increase would be required before the payment of the increased benefits."

We do not believe action by the Governor and Council is necessary. While the salaries of both the Deputy and the Chief are set by the Governor and Council, the retirement benefits are set by statute. For that reason it is unnecessary to obtain Governor and Council approval of the retirement pay for these officers.

With respect to answers 1 and 2 above, it appears that Chapter 214, P. & S. laws of 1951 as amended by Chapter 166, P. & S. 1953, amends by implication section 22 of Chapter 15, Revised Statutes 1954. The provisions of section 22 apply to the Chief (who was once a member), as well as to members. See the second paragraph of section 22 as quoted on the first page of this memo. Thus, Chapter 214 in amending section 22 of the Revised Statutes of 1954, of necessity amended the whole section so as to have application to the Chief as well as to members.

The Deputy Chief is, of course, a "member", and is selected by the Chief to "act as Deputy." Chapter 15, section 1, VI, Revised Statutes 1954. As a "member", the Deputy receives the benefits of Chapter 214, P. & S. 1951 as amended.

JAMES GLYNN FROST
Deputy Attorney General

February 9, 1960

To: Paul A. MacDonald, Deputy Secretary of State

Re: Conviction — Absence of Defendant and Counsel

We have your request for an opinion as to whether the following facts constitute a conviction:

A driver of a motor vehicle, exceeding the speed limit of 70 m.p.h. on the Maine Turnpike by 10 m.p.h., is stopped by a State Police officer. The driver is given a summons to appear at court on the 14th of August, taken to a bail commissioner, where he pays \$25 to the bail commissioner to be recognized to appear before the court on the 14th of August. The driver then endorses the following upon the reverse side of the summons: