

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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May 17, 1960

Allan L. Robbins, Warden
Maine State Prison
Thomaston, Maine

Dear Allan:

We have your letter of May 11, 1960 in which you ask the Attorney General if it is proper that prisoners of the Maine State Prison be used to furnish labor toward fixing up the town park of the Town of Thomaston. The following law relates directly to your question:

Chapter 27, section 3-A, as enacted by Chapter 242, section 2, Public Laws of 1959 —

“Employment of prisoners and inmates on public works; use for other purposes; escape from such employment or use. The department may authorize the employment of able-bodied prisoners in the State Prison or inmates of the Reformatory for Men in the construction and improvement of highways or other public works within the State under such arrangements as may be made with the State Highway Commission or other department or commission of the State having such public works in charge, and said department may prescribe such rules and conditions as it deems expedient to insure the proper care and treatment of the prisoners or inmates while so employed and their safekeeping and return. The department may further authorize the training and use of able-bodied prisoners in the State Prison or inmates in the Reformatory for Men by the State Forestry Department or the Department of Civil Defense and Public Safety to fight fires or provide assistance during or after any civilian disaster. Any prisoner or inmate who escapes from any assignments described in this section, or any other assignment beyond the walls of the State Prison or off the grounds of the Reformatory for Men shall be guilty of escape under this chapter or chapter 135, section 28.”

In reading the above law, it appears clear that the use of able-bodied prisoners of the Maine State Prison can be used only in conjunction with work carried on by a department or commission of the State of Maine having such public works in charge. Such statute would appear to not permit the use of prisoners as contemplated in your request.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

May 17, 1960

To: Ralph L. Langille, Chief Inspector of Elevators, Labor and Industry
Re: Sec. 117, Ch. 30, R. S. 1954, Authority of the Board of Elevator Rules and Regulations

We have your memo of May 2, 1960, in which you ask for a ruling as to the authority of the Board of Elevator Rules and Regulations to promulgate rules and regulations for "idle elevators." You state that by idle elevators you mean elevators which are said to be out of use and, therefore, are not required to be inspected in accordance with the provisions of section 122, Chapter 30, R. S. 1954, and for which the certificate of inspection required under section 123, Chapter 30, R. S. 1954 for their lawful operation has expired, or, in the case of a few elevators, has never been issued because the elevator has not been in use since the "Elevator Law" became effective in 1950.

Your memo continues as follows:

"Sec. 117, Ch. 30, R. S. 1954 states in part that "The Board shall formulate reasonable rules and regulations for the safe and proper construction, installation, alteration, repair, use, operation and inspection of elevators in the State." Can the powers granted in Sec. 117 be construed to include authority for the Board to adopt rules that will reasonably assure that "idle elevators", as designated above, will not be operated and will be reasonably safe during their idleness?

"There has been at least one instance where an individual was severely injured in an accident involving an elevator that had been out of use and idle for several years. Also, some elevators have been temporarily or indefinitely, taken out of use by the owner or user to avoid meeting the requirements of the elevator rules and regulations. In many cases such elevators can be reactivated simply by throwing in the power switch or by replacing fuses in their circuits. Hoistways in some cases may not be properly enclosed or hoistway landing entrances may be inadequately protected, also, elevator cars and counterweights suspended by cables represent a hazard, particularly after years of disuse. These hazards can be minimized by suitable precautions.

"In order to minimize unsafe conditions and prevent the unauthorized operation of "idle elevators" the Board of Elevator Rules and Regulations, subject to confirmation of their authority to do so by the Department of the Attorney General, has adopted the following requirements:

"Idle Elevators: All elevators which are not inspected as required by these rules and regulations and for which the certificate of inspection has expired or has not been issued, and which have been permanently or indefinitely discontinued from use, shall have:

- (a) The power leads to the driving machine motor disconnected in a manner that they may not be readily reconnected, and
- (b) All hoistway landing doors or gates which guard the full height and width of the landing openings shall be locked in the closed position from the hoistway side, except that such doors or gates at bottom landings may be locked from the landing side. When doors or gates which do not guard the full height and width of the hoistway landing openings are provided, the landing openings shall be suitably protected up to a height of not less than the hoistway enclosure at each floor.

“If it is found that the Board of Elevator Rules and Regulations does not have authority to formulate rules for “idle elevators”, the Board proposes to adopt the requirements stated in (a) and (b) above and the requirements given in (c) and (d) below as nonmandatory recommendations:

- (c) The car should be landed on suitable supports at the bottom landing or in the pit, with the hoist cables, if any, unhitched from the car.
- (d) The counterweights, if any, should be landed on suitable supports in the pit with the counterweight cables unhitched from the counterweights or from the cable drum.

“It is recognized that the adoption of mandatory requirements as stated in (a) and (b) above will present an administrative problem, since no penalties can be invoked, except the penalties for the operation of an elevator without a valid certificate of inspection displayed thereon, as is now provided for in Sec. 123, Ch. 30, R. S. 1954.”

Answer:

It is our opinion that the statutes relating to elevators do not authorize the Board of Elevator Rules and Regulations to promulgate such rule as you refer to in your memo. There could be no objection, however, to the issuance of non-mandatory rules regarding idle elevators.

Proper rules and regulations must have as their basis a statute authorizing the promulgation of such rule and regulation. Without such statute the rule and regulation is void.

A rule and regulation, which becomes a law when duly promulgated, is a step authorized to achieve an end desired by the Legislature. Our examination of the statutes leads us to the conclusion that those rules and regulations to be enacted by the Board should all relate to elevators in use — not to an elevator the use of which has been discontinued, and need no longer be registered.

Thus, section 123 of Chapter 30, R. S. 1954, provides a penalty for the use of an elevator without a valid inspection certificate — the issuance of the certificate being bottomed upon the conformity of the elevator to the rules of the Board. Yet section 122 of Chapter 30, R. S. 1954, provides that —

“Each elevator *proposed to be used within this state* shall be thoroughly inspected . . . and if found to conform to the rules of the board, upon payment of the inspection fee where required and a registration fee of \$2 per year by the owner or user of such elevator to the inspector, the latter shall issue to such owner or user an inspection certificate.”

We cannot find any provision imposing a penalty for violation of a rule and regulation other than the penalty of non-user of the elevator. Thus, if the elevator is not in conformity with rules of the Board it receives no certificate, or the certificate is revoked, or the elevator condemned. A penalty may be invoked for operation without a certificate, or after condemnation, but not merely for nonconformity to the rules of the Board.

These facts being so, it follows that the rules and regulations were not intended to govern "idle elevators" as you define them.

JAMES GLYNN FROST
Deputy Attorney General

May 27, 1960

To: Maine State Retirement System

Attention: Edward L. Walter

Re: Retirement Fund

Upon your advice the son of the late _____, _____ Maine, requested this office to give an opinion re the retirement fund accumulated by his father.

It appears that his father ceased working for the Town of _____, a local participating district in the Maine State Retirement System, on September 26, 1959. Under date of October 1, 1959, Mr. _____ made application for retirement, effective October 1, 1959. On November 3, Mr. _____ died, leaving \$2,288.96 in the retirement fund.

The Board issued a check in the amount of \$117.39 to the estate of the deceased, and advised that the remainder of the \$2,288.96 was not available, benefit-wise, under the law, to any other person.

The son claims that under the provision of Section 9, II of Chapter 63-A, Revised Statutes of 1954 as amended, he should be entitled to some benefit:

"Sec. 9.

. . .

"II. Should a member die any time after attaining eligibility for retirement under any of the provisions of this chapter but before any election in accordance with the provisions of section 12 becomes effective, the following benefits shall be payable: . . ."

The Board answers by saying that the father died *after* the time within which he could have elected an option under the provision of section 12. Because the said section provides that retirement allowances shall be paid in equal monthly installments, the Board has determined that a period of 30 days is the time within which, after application for retirement, that an election can be made, and at the end of which time payment becomes normally due.

"Sec. 12. Payment of retirement allowances. All retirement allowances shall be payable for life in equal monthly installments including any fraction of a month up to the date of death. Upon attainment of eligibility for retirement and *until the first payment on account of a retirement allowance becomes normally due*, any member may elect to convert the retirement allowance otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of one of the optional forms named below; provided, however, that an election of an optional benefit