

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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You make the following statement concerning such program:

“With respect to the evaluation of the capabilities and potential of individual employees, however, it appears that specific authority is included in amendments to Section 2 of Chapter 59 made at the last Legislature wherein the sentence “The Commissioner may train his employees or have them trained in such manner as he deems desirable, at the expense of the Department” was added to this Section. Under this Section of the law we have put into effect a training program which, among other things, utilizes outside training facilities to provide guidance, advice and instruction to selected examiners in order that they may become more expert in their specific fields. An integral part of this training program is the selection of the right man for the right training. The work of these consultants is limited to the evaluation of individual employees for this specific purpose. It is not in the nature of a general administrative survey and evaluation such as has been authorized for several departments in past years and accompanied by appropriations to cover the cost of the same. Use of independent consultants for this purpose seems to be tied directly to this authorization now contained in Section 2.”

The amendment to Section 2 of Chapter 59 referred to in the above quote was enacted by Chapter 178, Section 3, Public Laws of 1959.

You then ask: “Would you please advise me if you consider the Legislative reference in Section 2 with respect to expenditures for training purposes sufficiently specific to continue our training program.”

Answer: Yes.

JAMES GLYNN FROST
Deputy Attorney General

August 15, 1960

To: Governor John H. Reed

Re: Maine Central Railroad Co. Passenger Service

Relative to your meeting this afternoon on the above matter, the following is offered.

Upon a petition filed by the Maine Central Railroad Co. with the Public Utilities Commission on July 8, 1959 seeking authority to discontinue all passenger train service, the Commission on January 14, 1960 granted discontinuance of service via Lewiston-Auburn, but ordered the Railroad to continue operating, for a period of not less than one year, four trains furnishing service; one from Portland via Augusta to Bangor; one from Portland via Augusta and Bangor to Vanceboro, and similar return trains.

On appeal taken by the Railroad Co. to the Maine Supreme Court, the Court upheld the contentions of the Railroad that continued passenger service would be an oppressive financial burden and ordered the Public Utilities Commission to issue a decree authorizing discontinuance of all passenger service.

Immediately after the Supreme Court decision was rendered, the Public Utilities Commission and its lawyers discussed the possibility and

feasibility of appealing the case to the United States Supreme Court without determining whether or not the suit was of the nature that made it eligible for review by that Court. It was concluded that the merits of the case were such that the chance of reversing the decision of our Maine Court was so remote as to be practically nonexistent. For that reason, the Public Utilities Commission issued its decree in conformity with the Court decision.

With respect to the *right* of the Public Utilities Commission to appeal the case to the United States Supreme Court, there is at this time some question. Appeals or certiorari to the Supreme Court of the United States are generally provided for when the aggrieved party has been deprived of some substantial right accorded to him by a provision of the United States Constitution or by a treaty or by Federal statute. Thus, it is usually said that "there must be a substantial Constitutional question" before review of a State Court decision will be made by the United States Supreme Court.

At this point no such Federal Constitutional question by which the State has been deprived of a legal right, title, or interest by virtue of the decision of our Maine Court, can be seen. The Maine Court decision was a broad one avowedly giving full consideration to "the public interest" in having passenger service maintained, and found, as against the damage that would be done to the Railroad by requiring such continued service, that the public interest would be better served if the passenger service were discontinued.

Frank E. Hancock, the Attorney General, is familiar with the contents of this memo and you are advised that if you believe further study of the problem is desirable, we will be happy to cooperate. At the present time, however, we could not recommend pursuing the case further.

We are enclosing a mimeographed copy of our Court's decision for your file.

JAMES GLYNN FROST
Deputy Attorney General

August 26, 1960

To: Ober C. Vaughn, Director of Personnel

Re: Military Leave of Absence — State Personnel

We have your request for a determination of the status of a Highway Department employee who entered military service in 1948 and who, without break, has remained in the service since. It appears that such person entered service as an officer and has continued such service without further re-enlistment.

Your question is as to whether such person is still on leave of absence under the provisions of Chapter 63, section 28, Revised Statutes of 1954.

In our opinion, such person is still on a leave of absence. The pertinent portions of section 28, above cited, read as follows:

"Whenever any employee, regularly employed for a period of at least 6 months by the state or by any department, bureau, com-