

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

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September 21, 1960

To: Governor John H. Reed, Executive

Re: Maine Central Railroad Case

This memo deals with the recent decision of our Law Court which authorized the Maine Central Railroad to discontinue all passenger service on its lines.

You have asked this office to determine if our court considered, in making its decision, a provision of the charter of the Kennebec and Portland Railroad Company (which railroad was later consolidated with the Maine Central Railroad), which reads as follows:

P. & S. 1836, c. 227:

“Sect. 6. Be it further enacted, That it shall be the duty of said Company to provide and maintain on their Rail Road suitable and convenient cars for the transportation of persons and freight of every description to be transported thereon; . . .”

The question was presented on the basis that such charter provision is a part of a contract between the State and the Railroad corporation and impresses a positive duty upon the railroad to maintain a passenger service, which duty could not be waived by the Public Utilities Commission or the Court, but could only be dispensed with by an act of the Legislature.

The charter provision cited is not expressly mentioned in the Court's decision, however we *do* know that the principles of law involved where such a charter provision is in existence were discussed and argued in brief of both parties and in oral argument before the court.

We must take issue with some of the statements made in the memorandum of law recently submitted to you which raises the question.

The memorandum states that the above-cited section of the 1836 Charter of the Kennebec & Portland R. R. Co. imposes a *mandatory* duty upon the Maine Central Railroad to provide passenger service since the legislature has done nothing to abrogate this command; that that provision has continued in force and must be deemed to be continuing legislation.

A look at the history of the Kennebec & Portland Railroad Co. seems in order.

The Kennebec & Portland Railroad Co. was incorporated April 1, 1836 (Laws of 1836, Chapter 227); it was afterwards organized and proceeded to construct a railroad from Augusta to Portland; by legislative authority it issued its bonds secured by a mortgage of its railroad and franchise; by the Laws of 1857, Chapter 106 entitled “an act additional to an act to incorporate the Kennebec & Portland Railroad Co.” the legislature said in Section 3 —

“Said railroad company is hereby made subject to *all the general laws of the state relating to railroads, . . .*” (Emphasis supplied)

In 1859 proceedings were commenced under Revised Statutes of 1857, Chapter 51 (Public laws relating to railroads) to foreclose its mortgage and on May 18, 1862 the foreclosure was perfected. On May 20, 1862, a new corporation was formed by holders of the bonds secured by said mortgage. The new corporation was formed under the Railroad law of 1857 under the name of the Portland & Kennebec Railroad Co. The Maine court said

in *State v. Maine Central*, 66 Me. 488, referring to this specific incident, that the Kennebec & Portland Railroad Co. by its own act (see 1857, Chapter 106, *Sec. 3 above*) —

“became subject to the provisions of R. S. Chap. 46, section 17 by which the state reserves the right to alter, amend or repeal charters granted by its authority, a reservation which applies to all corporations whatsoever, railroads as well as others.”

In 1864 the following law was enacted, Chapter 238 — “an act additional to ‘an act to secure the safety and convenience of travellers on railroads, passed in the year one thousand eight hundred and fifty-eight.’” which reads at section 4:

“Every railroad that shall be formed by the foreclosure of a mortgage of any railroad heretofore or hereafter made, *shall be subject to such laws as the legislature have enacted or shall hereafter enact concerning railroads, anything in the original charter to the contrary notwithstanding.*” (Emphasis supplied)

The Maine Central Railroad Co. was organized in 1862 under R. S. 1857, Chapter 51, the act relating to railroads. In February of 1873 the Portland & Kennebec Railroad Co., which was under lease to the Maine Central, was consolidated with the Maine Central. (P. & S. Laws 1873, Chapter 383.)

Chapter 51 of R. S. 1871, the same railroad act, reads as follows at section 68:

“The trustees of bondholders or other parties under contract with them operating a railroad, and all the corporations formed in the modes hereinbefore provided, shall have the same rights, powers and obligations as the old corporation had by its charter, and the general laws; *and shall be subject to be amended, altered or repealed by the legislature and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter.*” (Emphasis supplied)

The Public Utilities Commission was eventually created by the legislature. With reference to regulation and control of public utilities, there appears a provision relating to abandonment or discontinuance of service by public utilities (See R. S. 1954, Chapter 44, section 48.) The legislature therefore has amended by general law any prior inconsistent charter provisions.

It is clear that the legislature has the authority by general legislation to amend, alter or repeal charters of corporations.

R. S. Chapter 53, Section 2:

“Act of Incorporation passed since March 17, 1831, may be amended, altered or repealed by the legislature, as if express provision therefor were made in them unless they contain an express limitation; . . . ”

Constitution of Maine, Article IV, Part Third, Section 14:

“Corporations shall be formed under general laws, and shall not be created by special acts of the legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the state.”

Section 6 of the 1836 Charter contained no *express limitation*. Whatever obligation might by such charter provision have been imposed for the benefit of the public has been modified by the legislature in its express grant of power to the Public Utilities Commission to approve discontinuance of service.

Therefore, we conclude that the charter provision of 1836 is not a mandatory duty upon the Maine Central Railroad Co. The legislature has acted with regard to such a charter and has abrogated that command and it can no longer be considered to be in force.

We also conclude that the charter provision of 1836 is not new evidence, and further conclude that by various subsequent enactments to the general law affecting railroads the effect of that provision has been nullified.

FRANK E. HANCOCK
Attorney General

October 17, 1960

Honorable David J. Kennedy
State Representative
Milbridge, Maine

Dear Mr. Kennedy:

This letter is in response to your oral request for an opinion relating to the reciprocity provisions of section 6 of Chapter 68, Revised Statutes of 1954, as amended. The provisions in question read as follows:

“ . . . The board may, in its discretion, grant certificates of registration to such persons as shall furnish with their application satisfactory proof that they have been registered in some other state, provided that such other state shall require a degree of competency equal to that required of applicants of this state. Persons of good character who have become registered as pharmacists by examination in other states prior to July 3, 1931 shall be required to satisfy only the requirements which existed in this state at the time when they became registered in such other states; and provided also that the state in which such person is registered shall, under like conditions, grant reciprocal registration as a pharmacist, without examination, to pharmacists duly registered by examination in this state. . . .”

With respect to the above-quoted provision, you inquire if a person registered in the State of Massachusetts in 1937 is eligible to receive a certificate when such person was not a graduate of a school or college of pharmacy or a department of pharmacy of a university.

Answer: No, such person is not eligible for registration under our reciprocity statute.

Since the person in question was registered as a pharmacist in Massachusetts in 1937, the first sentence of the above-quoted law, not the last sentence would be applicable:

“The board may, in its discretion, grant certificates of registration to such persons as shall furnish with their application satis-