

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

August 25, 1961

To: Governor John H. Reed

Re: Validity of Appointment of Chairman of Board of Registration of Voters

You have requested us to give an opinion with regard to the advisability of asking the Supreme Judicial Court for a ruling as to whether or not the appointment of the Chairman of the Board of Registration of Voters of Lewiston was valid.

Under the terms of the Constitution of the State of Maine, the Justices of the Supreme Court are required to give opinions to the Governor only when the occasion for that opinion is "solemn." At one time it was thought that any determination by the Governor that an occasion was solemn would not be questioned by the Court. See 95 Me. 564 (Dissent). However, our Supreme Court has ruled that it will first decide whether or not an occasion is solemn before it answers a request for an opinion. *Opinion of the Justices*, 95 Me. 564, 567. The Justices of the Supreme Court thus have the final authority to determine whether or not they will answer a request for an opinion.

It has been determined that opinions requested of the Supreme Court will be given only if their giving enables the requesting party to take affirmative action. *Opinion of the Justices*, 147 Me. 410, 415. Where no action is possible on the part of the requesting authority, no opinion will be given by the justices; *Opinion of the Justices*, 95 Me. 564, 567. *Opinion of the Justices*, 147 Me. 410, 415-416; 148 Mass. 623; nor will the Supreme Judicial Court give an opinion involving the rights of parties where those same rights can and may be the basis of subsequent private litigation which could eventually come before the said Supreme Judicial Court. *Opinion of the Justices*, 95 Me. 564, 569-571.

It thus appears:

1. That the Court will determine when a solemn occasion exists.
2. A solemn occasion does not exist where no affirmative action can be taken by the requesting party.
3. No solemn occasion exists when the issues forming the basis of the request can be determined by private litigation.

In the instant case, the Chairman appointed by you, which appointment was contested by an appointee of the Mayor of Lewiston. Your appointment has already been made, and there does not seem to be anything further which you, as Governor, can do with regard to this matter. The dispute between the two gentlemen in question can, and should be, resolved through the ordinary judicial processes. For either of these reasons, it is our opinion that the Supreme Judicial Court would determine that the occasion for an opinion determining this controversy would not be solemn. They would, therefore, refuse to give an opinion.

THOMAS W. TAVENNER
Assistant Attorney General

September 12, 1961

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Council Order Number 444

Reference is made to your memo of August 22 in which you ask for our comments relative to the jurisdiction of the Governor and Council in this matter.

It would seem appropriate to point out a little past history relative to the subject matter of this Council Order. The Federal Civil Defense Act of 1950 was amended by Public Law 85-606. Title II, section 205 was amended by section 4 of the above Public Law to provide that the Federal Government would contribute sums which would "not exceed one-half of the total cost of such necessary and essential state and local Civil Defense personnel and administrative expenses."

This amendment also provided that the grants from the Federal Government should be made by the Federal Administrator of Civil Defense after plans for the State Civil Defense activities had been submitted by the States and approved by the Federal Administrator.

Among the plans to be submitted shall be — "(4) Provide for the employment of a full time Civil Defense Director, or Deputy Director, by the State, and have such other methods of administration, including methods relating to the establishment and maintenance of personnel standards *on the merit basis*, (Emphasis supplied) (Except . . .) as the Administrator shall find to be necessary and proper for the operation of the plan;"

You will note that the Federal law simply provides that any plan which relates to personnel and administration shall provide that personnel standards shall be "*on the merit basis*." There is no reference in the Federal law to the requirement that the merit basis be the same as used in the State. Presumably any employment by the political subdivisions of the State in Civil Defense could be on a merit basis even though not the same as that used by the State.

Next, we would call to your attention that during the 100th Legislature there was introduced L.D. 1126 which was amended by Committee Amendment A, #H-281. This Legislative Document as amended was indefinitely postponed. The wording of the Committee Amendment A was substantially the same as that contained in Council Order Number 444. This would indicate to us that the legislature did not favor the action taken by the Council.

This office can now point out that the Personnel Board is a creature of the Legislature. The Personnel Board being created by the Legislature and its duties prescribed by that body, can only have its duties enlarged or diminished by the Legislature. It is the opinion of this office that the Executive Council has no jurisdiction to order the State Personnel Board to extend its services to the political subdivisions of the State. That action can be taken only by the Legislature.

The Council Order further authorizes political subdivisions to accept the service of the State Personnel Board and adopt the regulations of that Board. The political subdivisions of the State are created and controlled by the Legislature. Only the Legislature can authorize political subdivisions to do or not do certain acts. This authority does not extend to the Executive Council.

It is, therefore, the conclusion of this office that Executive Council Order Number 444 has no effect as far as the State Personnel Board or the political subdivisions of the State are concerned.

GEORGE C. WEST

Deputy Attorney General