

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

furnish a preference certificate which implies that there is no degree of disability.

2. A certificate entitled "Present Existence of Disability for Preference Purposes." This certificate implies that for preference purposes the veteran has greater than 0% but less than 10% service connected disability. The veteran does not receive any compensation and the only practical purpose of this certificate is to enable the veteran to have the ten-point preference, whereas he is not entitled to compensation which he would receive with a 10% service connected disability.
3. A certificate entitled "Receipt of Compensation" or "Entitlement to Receive Compensation." The purpose of this certificate is to show that the veteran is receiving at least 10% compensation for a service connected disability or that he is entitled to receive the same compensation but for one reason or another has declined receipt of it. In either instance, the veteran still falls within the category of those receiving at least 10% compensation.

Chapter 192, Public Laws of 1955, entitled "An Act Permitting Reopening of Examinations for State Employment by Disabled Veterans." The provisions of this act permit a veteran to reopen an open competitive examination if he has a service connected disability to a compensable degree. The intent of the legislature in this matter is closely akin to that of the federal government and permits only those veterans who have at least a 10% service connected disability the privilege of reopening an open competitive examination.

The two provisions are clearly consistent in that the first provision gives *all* veterans with a disability rating of more than 0%, a ten-point preference; whereas the laws of 1955 extend a further privilege to only those veterans with a disability rating of 10% or greater.

Therefore, the words found in the Public Laws of 1955, Chapter 192, "*to a compensable degree*" clearly mean that the veteran must not only have a service connected disability, but must have at least a 10% disability rating to be considered a *compensable* disability.

WAYNE B. HOLLINGSWORTH

Assistant Attorney General

November 30, 1961

To: Governor John H. Reed

Re: Legislative Finance Officer

In your letter of November 30, 1961, you state:

"Upon the election of a Governor in the November General Election, and prior to the convening of the next Legislature, meetings or hearings are conducted by the incoming Governor, with representatives of the various departments in which the anticipated needs of the departments, for the forthcoming biennium, are projected. As a result of these meetings or hearings the Governor prepares his recommendations to be made to the incoming Legislature."

You now ask:

"In your opinion, will sub-section XV-B of the proposed Act au-

thorize or direct the proposed Legislative Finance Officer to participate or attend the meetings or hearings conducted by the Governor or members of his staff?"

The language in the proposed law states that among the duties of the proposed Legislative Finance Officer shall be:

"B. To examine all requests for appropriations made by the various executive agencies of State Government and *attend any hearings necessary to obtain complete information,*" (Emphasis ours)

In order to answer your question it is necessary to determine if the meetings or hearings held by the Governor-elect with department heads are "hearings" within the meaning of the proposed legislation.

"Hearing presupposes formal proceeding upon notice with adversary parties and with issues on which evidence may be adduced by both parties and in which all have a right to be heard, as respects whether investigations provided for in Securities Exchange Act were hearings. Securities Exchange Act of 1934, sec. 21 (a-c, e), 15 U.S.C.A. sec. 78 u (a-c, e). In re Securities and Exchange Commission, C.C.A. N.Y. 84 F 2d 316, 318."

"There are at least three essential elements of a common-law 'hearing.' The right to seasonably know the charges or claims preferred; the right to meet such charges or claims by competent evidence; and the right to be heard by counsel upon the probative force of the evidence adduced by both sides, and upon the law applicable thereto. Wisconsin Telephone Co. v. Public Service Commission, 287 N.W. 122, 133, 135, 138, 143. 232 Wis. 274."

A reading of these definitions of "hearing" indicates that one essential element of a "hearing" is that there be "adversary parties." A "hearing" therefore should have at least two opposing parties presenting opposite sides of a story to a third party for a decision. (Of course, one party may refuse or decline to present evidence.)

The type of meeting or hearing described in your letter fails to meet the criteria of the definition of a "hearing" hereinbefore set forth. Actually, it is an informal meeting of a department head and a Governor-elect to provide the latter with budget figures; to discuss them; and to give the Governor-elect necessary information on which he can make budget estimates. There is no "adversary proceeding" involved.

It is, therefore, concluded that such meetings are not "hearings" as that word is used in proposed R. S. Chapter 10, sec. 26, sub-sec. XV-B.

Therefore, the Legislative Finance Officer has no duty or right to attend such meetings.

GEORGE C. WEST

Deputy Attorney General

December 1, 1961

To: Austin H. Wilkins, Commissioner of Forestry

Re: Arborist Law — P.L. 1957, c. 169; P.L. 1961, c. 336.

We have your request of October 30, 1961, for our opinion with regard to