

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

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

certain problems which have arisen under the newly enacted arborist law. We will take up your questions in the order in which they are presented.

R.S. 1954, c. 36:

Section 66 — You have asked us whether or not an unlicensed person can do work on trees owned by a relative, friend or neighbor with or without compensation. It is our opinion that this new law limits an unlicensed person to work on trees on his own premises or on the property of his regular employer. Any other work, whether gratuitous or for compensation, done for any other person would be a violation of this law.

Section 67, paragraph 2 — You have asked whether or not the power of the board to prescribe all rules and regulations governing examinations is limited to rules as to the type of examination given and the question coverage. It is our opinion that this paragraph limits the board to prescribing rules and regulations governing examinations and liability insurance and that the board cannot under this section make regulations governing who shall be required to take examinations, who shall be licensed or any other substantive matters.

Section 67, paragraph 7 — You ask whether the phrase “during the course of their employment” would exempt public utility employees from the provisions of this law while they are working on the trees of a private individual after utility company hours. It is our opinion that this particular phrase is intended to limit this exception to public utility employees when and only when they are working for the public utility company by which they are employed. They would not be exempt when working after hours for a private individual.

Section 67, paragraph 2 — You have asked us whether the power of the board to promulgate regulations with regard to liability insurance would include public liability insurance, employer’s liability insurance and workmen’s compensation insurance. We feel that the board under this section has the power to regulate only public liability insurance. This is because workmen’s compensation insurance is regulated by statute and cannot be altered in any way by individual board regulations. We are not certain what is meant by the term “employer’s liability insurance” but we assume that it is similar to workmen’s compensation insurance and would, therefore, not be subject to regulation by the board.

THOMAS W. TAVENNER

Assistant Attorney General

December 1, 1961

To: Austin H. Wilkins, Commissioner of Forestry

Re: District Court Law (P.L. 1961, c. 386) — Taking of Violators by Fire Wardens to Court having Jurisdiction

We have your letter of October 11, 1961, requesting our opinion as to whether or not the new District Court Law gives your fire wardens authority to take violators to the nearest court in all instances, or if you operate as previously within the county in which the violation occurs. The new District Court Law will not change your procedure at all except that each district will constitute one jurisdictional area.

These districts can, and in many cases do, overlap county lines. Therefore,