

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

January 9, 1962

To: Governor John H. Reed

Re: Emergency Interim Successors to Legislature, Administering Oath to

You have asked if the Governor may administer the oath to the emergency interim successors to legislators.

Revised Statutes, chapter 10, section 8-H, provides that "each emergency interim successor shall take the oath required for the legislator to whose powers and duties he is designated to succeed."

The law is silent as to who shall administer this oath. The Constitution of Maine, Article IX, section 1, prescribes the form of oath required to be taken by senators and representatives. It also provides:

"The oaths or affirmations shall be taken and subscribed. . . . by the senators and representatives before the Governor and Council. . . ."

The constitution having provided that the oath by senators and representatives be taken before the Governor and council it would follow that the emergency interim successors to the senators and representatives may have their oath taken before the Governor and council.

GEORGE C. WEST

Deputy Attorney General

January 9, 1962

To: Madge E. Ames, Director Women & Child Labor Division of Labor & Industry Department

Re: Coverage of counter waiters and waitresses under Minimum Wage Law

We have your memo of January 4, 1962, asking for an interpretation of Revised Statutes, chapter 30, section 132-B, III, C.

Originally this section read:

"III. 'Employee' any individual employed or permitted to work by an employer but shall not include;

C. Any individual employed as a waiter, waitress or service employee who receives the major portion of his remuneration in the form of gratuities;"

Section 3, chapter 277, P.L. 1961, amended this section to read in part:

"III. 'Employee' any individual employed or permitted to work by an employer but the following individuals shall be exempt from section 132-A to 132-J except as provided in section 132-A-1:

C. Any individual employed as a waiter, waitress, car hop, not to include counter waiters or waitresses, or those whose tips are required to be divided with others;"

We interpret this portion of section 132-B, III, C, as if it read:

"C. Any individual employed as a waiter, waitress, or car hop except counter waiters, waitresses and those waiters, waitresses or car hops whose tips are required to be divided with others;"

Counter waiters and waitresses are subject to the minimum wage law.