

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

for the calender years

1961 - 1962

March 28, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Holidays

This is in answer to your memorandum of March 26, 1962.

As I understand it a school committee voted to keep the schools open on January 1st without in the vote directing the teachers to observe the holiday by appropriate exercises. I am of the opinion that it is not necessary that the school committee direct the teachers to hold appropriate exercises on January 1st since section 154 of Chapter 41 lists the exercises to be held on January 1st should the schools remain open.

It is my opinion, therefore, that the day should not be observed as a legal holiday since the school committee voted to keep the school open on that day.

RICHARD A. FOLEY

Assistant Attorney General

April 2, 1962

To: Joseph T. Edgar, Deputy Secretary of State

Re: Voting Rights of Public Assistance Recipients

A question has arisen relative to the right to vote of a person who has received supplies from a municipality within a three-month period immediately preceding an election. Particular attention is focused upon the cases of persons receiving Aid to Dependent Children, Old Age Assistance, Aid to the Blind and Aid to the Disabled, who have these grants supplemented by assistance from the welfare funds of the municipality. The four categories enumerated above are generally denominated as public assistance and will be so referred to hereafter.

Our Constitution, Article II, section 1, provides:

“Every citizen of the United States of the age of twenty-one years and upwards, excepting paupers and . . . shall be an elector for governor . . . .

Early in our state the question arose as to who was a pauper under this provision of the State Constitution. Our court in reply to questions submitted by the House of Representatives on March 28, 1831, said:

“ . . . a man is to be considered a pauper so long as he receives supplies, as such, from the town where he resides, but no longer. Some limit must be fixed, for some must have been intended; and as residence in a particular town for three months next preceding an election authorizes a citizen of the United States to be an elector of state officers in that town, we are of opinion that such a person cannot constitutionally be considered as an excepted pauper, unless within that term, he shall have been directly or indirectly furnished with supplies, as such, from or under the sanction of the overseers of the poor of such town.”

*Opinion of the Justices*, 7 Maine 497 at 499.

This Opinion of the Justices stated the law of Maine relative to the definition of a pauper and the right to vote. This definition consists of two parts (1) de-

fining a pauper (2) defining a pauper in relation to the constitutional right to vote.

Part (1) defining a pauper has been changed from time to time by legislation. Persons who would be paupers under this definition have now in some instances been declared not to be paupers by acts of the legislature. One large segment so declared not to be paupers, though receiving aid or supplies, are the recipients of public assistance.

The Revised Statutes, Chapter 25, section 236, provides in part:

“The receipt of aid to dependent children shall not pauperize the recipient or the relative with whom the child is living and the receipt of general relief by such recipient or relative with whom the child is living, made necessary by the presence of the child in the family, shall not be considered to be pauper support.”

Also, Chapter 25, section 282, reads in part:

“The receipt of old age assistance shall not pauperize the recipient thereof, and the receipt of general relief by such recipient shall not be considered to be pauper support.”

The same wording is found in Chapter 25, section 309, relative to aid to the blind and section 319-R relative to aid to the disabled.

So, for many years it has been accepted that recipients of public assistance, even though their grants may have been supplemented by general relief from the municipality, are not paupers and are eligible to vote in any election.

Part (2) defining a pauper in relation to the constitutional right to vote has remained unchanged until in 1961 the legislature revised the election laws. In section 1, the following definition is found:

“‘Pauper’ means a person who has been directly or indirectly furnished supplies by a municipality within 3 months of any election at which he seeks to vote.” (The second sentence, not quoted, has no bearing on this matter.)

Consequently, we now have an act of the legislature which in effect simply restates the law of the state as enunciated by the court in *Opinion of the Justices*, 7 Maine 497 at 499:

“Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases. *The Legislature will not be held to have changed the law it did not have under consideration when enacting a later law, unless the terms of the subsequent act are so inconsistent with the provisions of the prior law that they cannot stand together.* Sutherland Statutory Construction, Third edition, Section 1913. This principal has been recognized by our court in *Starbird v. Brown*, 84 Me. 238 and *Mace v. Cushman*, 45 Me. 250 at 260.” (Emphasis supplied) *Inman v. Willinski*, 144 Me. 116 at 123.

It cannot be said that the legislature intended to change the law relating to recipients of public assistance. That law was not under consideration when the election law was revised. Nor are the terms of the election law so inconsistent with the provisions of the public assistance laws and the law, as expressed by our court, that they cannot stand together. The definition in the election law is but a legislative enactment of existing law.

“The legislature is presumed to have in mind the decision of the court. If, therefore, the legislature in the amendment had intended to

change the application of these decisions, . . . they would have done so by the use of some apt language rather than to have left their intention to the uncertainty of implication." *Webber v. Granville Chase Co.*, 117 Me. 150 at 152.

It must, therefore, be concluded that recipients of public assistance who receive supplemental supplies or support from municipalities are not paupers within the meaning of Article II of the Constitution, or the definition in section 1 of the election laws.

The definition of paupers in section 1 of the election laws applies only to those persons who have been directly or indirectly furnished supplies by a municipality within three months of any election as their sole means of existence (other than their own work, occasional though it may be).

GEORGE C. WEST

Deputy Attorney General

April 5, 1962

To: Maynard F. Marsh, Chief Warden, Inland Fisheries & Game

Re: Sale of Smelts

You have asked if it is legal to sell and serve fried fresh water smelts at a road-side stand.

Answer: Yes.

The only provision in Chapter 37 relative to the sale of fresh water fish is in section 49. This section provides in part:

"It shall be unlawful for any person to sell or buy, directly or indirectly, any landlocked salmon, trout, togue, black bass, white perch or pickerel, except that pickerel may be sold in Washington County."

There is no other prohibition against the sale of fresh water fish in our fish and game laws. Therefore, it must follow that the sale of fried fresh water smelts is legal whether at a road-side stand or any other place.

GEORGE C. WEST

Deputy Attorney General

April 9, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Subsidy for Superintendence

This is in answer to your request for an opinion interpreting Revised Statutes of 1954, Chapter 41, section 81, which reads in part as follows:

". . . Upon the approval of said certificate by the Commissioner, the superintendent so employed shall, on presentation of proper vouchers, receive monthly out of the sum appropriated for superintendence of towns comprising school unions *a sum equal to the amount paid by the town*, provided the amount so paid shall not exceed \$1,350 for one year for the superintendent of any one town. . . ." (Emphasis supplied)